THE Peoples {Antient / and Just} Liberties ASSERTED, IN THE TRYAL OF *William Penn*, and *William Mead*,

At the Sessions held at the *Old-Baily* in *London*, the first, third, fourth and fifth of *Sept.* 70. against the most Arbitrary procedure of that Court.

Isa. 10. 1, 2. *Wo unto them that Decree Vrighteous Decrees, and write grievousness, which they have prescribed; to turn away the Needy from Judgment, and to take away the right from the Poor, &c.*

Psal. 94. 20. *Shall the Throne of Iniquity have fellowship with thee, which frameth mischief by a Law.*

Sic volo, sic jubeo, stat pro ratione voluntas.

Old-Baily, 1st. 3d. 4th, 5th of *Sept.* 1670.

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To the Engliſh Reader.

IF ever it were time to ſpeak, or write, 'tis now, ſo many ſtrange Occurrances, requiring both.

How much thou art concerned in this enſuing Trial *(where not only the Priſoners, but the Fundamental Laws of* England*) have been moſt Arbitrarily Arraigned: Read, and thou mayſt plainly judge.*

Liberty of Conſcience, *is counted a Pretence for Rebellion; and* Religious Aſſemblies, Routs *and* Riots; *and the* Defenders *of both, are by them reputed* Factious *and* Diſ-affected.

Magna Charta *is Magna far* — *with the* Recorder *of* London; *and to demand* Right *an affront to the Court.*

Will *and* Power *are their great* Charter, *but to call for* Englands, *is a Crime, incurring the penalty of their* Bale-dock, *and* Naſty hole, *nay, the menace a* Gag, *and* Iron Skackles *too.*

The Jury (though proper Judges) of Law and Fact) they would have over-ruled in both, as if their Verdict ſignified no more, then to eccho back the illegal charge of the Bench; and becauſe their courage and honeſty did more then hold pace, with the threat and abuſe, of thoſe, who ſate as Judges, (after two days and two nights reſtraint for a Verdict) in the end were fined and impriſoned for giving it.

O! what monſtrous and illegal proceedings are theſe? Who reaſonably can call his Coat his own? When Property, is made ſubſervient to the Will and Intereſt of his Judges; *or, who can truly eſteem himſelf a Free man?* When all Pleas for liberty are eſteemed Sedition, *and the Laws, that give, and maintain them, ſo many inſignificant pieces of formality.*

And What to they leſs then plainly tell us ſo, who at will and pleaſure break open our Locks, rob our Houſes, raze their Foundations, impriſon our Perſons, and finallly deny us Juſtice to our relief; *as if they then acted moſt like Chriſtian men, when they were moſt barbarous, in ruining ſuch as are really ſo; and that no Sacrifice could be ſo acceptable to God, as the deſtruction of thoſe, that moſt fear him.*

In short, That the Conscientious should only be obnoxious, and the just demand of our Religious Liberty, the reason why we should be denied our civil Freedom (as if to be a Christian and an English-man were inconsistant) and that so much solicitude and deep contrivance, should be imployed only to ensnare, and ruin so many ten thousand conscientious Families) so eminently, industrious, serviceable, and exemplary; *whilst Murders can so easily obtain pardons, Rapes be remitted, publick Uncleanness pass unpunished, and all manner of* Levity, Prodigality, Excess Prophaness, *and* Atheism, *universally connived at, (if not in some respect manifestly encouraged) cannot but be detestably abhorrent to every serious and honest mind.*

Yet that this lamentable state is true, and the present Project *in hand, let* London's Recorder, *and* Canterburies Chaplain *be heard.*

The first in his publick Panegerick, upon the Spanish Inquisition, higly admiring the prudence of the Romish Church, in the erection of it, as an excellent way to prevent Schism, *which unhappy expression, at once passeth sentence, both against our fundamental Laws, and Protestant Reformation.*

The second, In his printed Mercenary discourse against Toleration, *asserting for a main Principle,* That it would be less injurious, to the Government, to dispence with prophane and loose Persons, then to allow a toleration to religious Dissenters: *It were to over-do the business, to say any more, where is so much said already.*

And therefore to conclude, we cannot choose but admonish all, as well Persecutors, *to relinquish their Head-, Partial, and Inhumane Prosecutions (as what will certainly issue in disgrace here, and inevitable condign punishment, hereafter) as those who yet dare express their moderation (however out of fashion, or made the brand of Phanatischism) not to be huf,d or menaced, out of that excellent temper, to make their parts, and persons subservient, to the base humors, and sinister designs of the bigest mortal upon Earth: But to reverence and obey, the Eternal just God,* before whose great Tribunal, all must render their accounts, and where he will recompence to every Person according to his works.

THE

The Tryal of William Penn *and* VVilliam Mead.

AS there can be no Obſervation, where there is no Action; ſo its impoſſible, there ſhould be a juditious intelligence, without due Obſervation.

And ſince there can be nothing more ſeaſonable then a right information, eſpecially of *Publick Acts*; and well knowing, how induſtrious ſome will be, to miſ-repreſent, this Trial to the diſadvantage of the Cauſe and Priſoners, it was thought requiſite, in defence of both, and for the ſatisfaction of the People, to make it more publick; nor can there be any buſineſs wherein the People of *England* are more concerned, then in that which relates to their civil and Religious Liberties, queſtioned in the Perſons above-named, at the *Old-Baily*, the firſt, third, fourth and fifth of *Sept.* 1670.

There being perſent on the Bench, as Juſtices.

Sam. Starling, Mayor,
John Howel. Recorder.
Tho. Bludworth, Alder.
William Peak, Alderm.
Richard Ford, Alderm.
John Roberſon, Alderm.
Joſeph Shelden, Alderm.
Richard Brown.
John Smith, } Sheriffs.
James Edwards }

The Citizens of *Londan* that were ſummoned for Jurors, appearing, were impannelled, *viz.*

Cla. Call over the Jury.

Cryer. O yes, *Thomas Veer*, *Ed. Buſhel*, *John Hammond*, *Charles Milſon*, *Gregory Walklet*, *John Brightman*, *Wil. Plumſted*, *Hen. Henly*, *James Damask*, *Henry Michel*, *Wil. Lever*, *John Baily*

The Form of the Oath.

You ſhall well and truely try, and true Deliverance make betwixt our Soveriaign Lord the King, and the Priſoners at the Bar, according to your Evidence; So help you God.

That

The Indictment.

That *William Penn* Gent. and *William Mead* late of *London*, *Linnen-Draper*, with divers other Persons, to the Jurors unknown, to the number of three hundred, the 15th day of *August*, in the 22th year of the King, about eleven of the clock in the forenoon, the same day, with Force and Arms, &c. in the Parish of St. *Bent Grace-Church*, in *Bridge-ward London*, in the street called *Grace-Church-Street*, unlawfully and tumultuously did assemble and congregate themselves together, to the disturbance of the Peace of the said Lord the King; and the aforesaid *William Penn* and *William Mead*, together with other persons, to the Jurors aforesaid unknown, then and there so assembled and congregated together; the aforesaid *William Penn*, by agreement between him and *William Mead*, before made: and by abetment of the aforesaid *William Mead* then and there, in the open street, did take upon himself to preach and speak and then; and there, did preach and speak, unto the aforesaid, *William Mead*, and other persons there, in the street aforesaid, being assembled and congregated together, by reason whereof a great concourse and tumult of People in the street aforesaid, then and there, a long time did remain and continue, in contempt of the said Lord the King, and of his Law, to the great disturbance of his Peace, to the great terror and disturbance of many of his Leige people and Subjects, to the ill example of all others, in the like case Offenders, and against the Peace of the said Lord the King, his Crown, and Dignity.

What say you, *William Penn* and *William Mead*, are you guilty, as you stand indicted, in manner and form, as aforesaid, or not guilty.

Pen. It is impossible, that we should be able to remember the Indictment verbatim, and therefore we desire a Copy of it, as is customary in the like occasions.

Rec. You must first plead to the Indictment, before you can have a Copy of it.

Pen. I am unacquainted with the formality of the Law, and therefore, before I shall answer directly, I request two things of

of the Court. First, that no advantage may be taken against me, nor I deprived of any benefit, which I might otherwise have received. Secondly, that you will promise me a fair hearing, and liberty of making my defence.

Court, No advantage shall be taken against you; you shall have liberty, you shall be heard.

Pen. Then I plead not guilty in matter and form.

Cla. What sayest thou William Mead, *are thou guilty in manner, and form, as thou standest indicted, or not guilty?*

Mead. I shall desire the same liberty as is promised *William Pen.*

Court, You shall have it.

Mead, Then I plead not guilty in manner and form.

The Court adjourned until the afternoon.

Cryer, O yes, &c.

Cla. Bring William Penn *and* William Mead *to the Bar.*

Obser. The said Prisoners were brought, but were set aside, and other business prosecuted. Where we cannot choose but observe, that it was the constant and unkind practices of the Court, to the Prisoners, to make them wait upon the Tryals of Fellons and Murderers, thereby designing in all probabillity, *both to affront and tire them.*

After five hours attendance, the Court broke up and adjourned to the third instant.

The third of *September*, 1670. the Court sate.

Cry, O yes, &c.

Cal. bring William Penn *and* William Mead *to the Bar.*

Mayor, Sirrah, who bid you put off their Hats? put on their Hats again.

Obser. Whereupon one of the Officers putting the Prisoners Hats upon their Heads (pursuent to the Order of the Court) brought them to the Bar.

Record. Do you know where you are?

Pen. Yes.

Record. Do not you know it is the Kings Court?

Pen.

Pen. I know it to be a Court, and I ſuppoſe it to be the Kings Court.

Rec. Do you not know there is reſpect due to the Court?

Pen. Yes.

Rec. Why do you not pay it then?

Pen. I do ſo.

Rec. Why do you not put off your Hat then?

Pen. Becauſe I do not believe that to be any reſpect.

Rec. Well, the Court ſets forty Marks apiece upon your Heads, as a Fine for your contempt of the Court.

Pen. I deſire it might be obſerved, that we came into the Court with our Hats off, (that is, taken off) and if they have been put on ſince, it was by order from the Bench; and therefore not we, but the Bench ſhould be fined.

Mead, I have a Queſtion to ask the Recorder, Am I fined alſo?

Rec. Yes.

Mead, I deſire the Jury, and all people to take notice of this injuſtice of the Recorder, who ſpake not to me to pull off my Hat, and yet hath he put a Fine upon my Head. O fear the Lord, and dread his Power, and yield to the guidance of his holy Spirit; for he is not far from every one of you.

The *Jury* ſworn again.

Obſer. J. Robinſon Lievetenant of the *Tower*, diſingeniouſly objected againſt *Edw. Buſhel*, as if he had not kiſt the Book, and therefore would have him ſworn again; though indeed, it was on purpoſe, to have made uſe of his tenderneſs of Conſcience in avoiding reiterated Oaths, to have put him by his being a Juryman, apprehending him to be a perſon, not fit to anſwer their arbitrary ends.

The Clark read the Indictment, as aforeſaid,

Cla. Cryer, Call *James Cook*, into the Court, give him his Oath.

Cl. James Cook, lay your hand upon the book, "The evidence "you ſhall give to the Court, betwixt our Soverain the King, and "the Priſoners at the Bar, ſhall be the Truth, and the whole Truth, "and nothing but the Truth, ſo help you God, &c.

Cook, *I was ſent for, from the Exchange, to go and diſperſe a Meeting in* Gracious-ſtreet, *where I ſaw Mr.* Penn *ſpeaking to the peo-*

ple,

ple, but I could not hear what he ſaid, becauſe of the noiſe; I endeavoured to make way to take him, but I could not get to him for the Crowd of people; upon which Captain Mead *came to me, about the Kennel of the Street, and deſired me to let him go on; for when he had done, he would bring Mr.* Penn *to me.*

Cour. What number do you think might be there?

Cook, About three or four hundred People.

Cour. Call Richard Read, *give him his Oath.*

Read being ſworn was askt, *What do you know concerning the Priſoners at the Bar?*

Read, My Lord, I went to Gratious-Street, *where I found a great Crowd of People, and I heard Mr.* Penn *Preach to them; and I ſaw Captain* Mead *ſpeaking to Lieutenant* Cook, *but what he ſaid I could not tell.*

Mead, What did *William Penn* ſay?

Read. There was ſuch a great noiſe, that I could not tell what he ſaid.

Mead, Jury, obſerve this Evidence, he ſaith he heard him preach, and yet ſaith, He doth not know what he ſaid.

Jury take notice, he ſwears now a clean contrary thing, to what he ſwore before the *Mayor*, when we were committed: for now he ſwears that he ſaw me in *Gratious-Street*, and yet ſwore before the *Mayor*, when I was committed, that he did not ſee me there, I appeal to the Mayor himſelf if this be not true. But no Anſwer was given.

Cour. What number do you think might be there?

Read, About four or five hundred.

Pen. I deſire to know of him what day it was?

Read, The 14th day of *Auguſt.*

Pen. Did he ſpeak to me, or let me know he was there; for I am very ſure I never ſaw him?

Cla. Cryer, *Call* ——— ——— *into the Court.*

Cour. Give him his Oath.

——— *My Lord, I ſaw a great number of people, and Mr.* Penn *I ſuppoſe was ſpeaking; I ſee him make a motion with his hands, and heard ſome noiſe, but could not underſtand what he ſaid; but for Captain* Mead *I did not ſee him there.*

Rec. What ſay you Mr. *Mead*? Were you there?

Mead, It is a Maxime in your own Law, *Nemo tenetur accusare seipsum*, which if it be not true Latine, I am sure it is true *English*, *That no man is bound to accuse himself*: And why dost thou offer to ensnare me with such a question? Doth not this shew thy malice? Is this like unto a Iudge, that ought to be Council for the Prisoner at the Bar?

Rec. Sir, hold your Tongue, I did not go about to ensnare you.

Pen, I desire we may come more close to the point, and that silence be commanded in the Court.

Cry. O yes, All manner of Persons keep Silence upon pain of Imprisonment——Silence in the Court.

Pen. We confess our selves to be so far from recanting, or declining to vindicate the assembling of our selves, to preach, pray, or Worship the Eternal, Holy, Iust God, that we declare to all the World, That we do believe it to be our indispensable Duty, to meet incessantly upon so good an Account; nor shall all the Powers upon Earth be able to divert us from reverencing and adoring our God that made us.

Brown, You are not here for Worshipping God, but for Breaking the Law; you do your selves a great deal of Wrong in going on in that Discourse.

Pen. I affirm I have broken no Law, nor am I guilty of the Indictment that is laid to my charge, and to the end, the Bench, the Jury, and my self, with these that hear us, may have a more direct understanding of this procedure, I desire you would let me know by what Law it is you prosecute me, and upon what Law you ground my Indictment?

Rec. Upon the Common-Law.

Pen. Where is that Common-Law?

Rec. You must not think that I am able to run up so many years, and over so many adjudged Cases, which we call Common-Law, to answer your curiosity.

Pen. This Answer I am sure is very short of my Question; for if it be Common, it should not be so hard to produce.

Rec. Sir, Will you plead to your Indictment?

Pen. Shall I plead to an Indictment, that hath no foundation in Law; if it contain that Law, you say I have broken, why should

should you decline to produce that Law, since it will be impossible for the Jury to determine, or agree to bring in their Verdict, who have not the Law produced, by which they should measure the truth of this Indictment, and the guilt, or contrary of my Fact.

Rec. You are a saucy Fellow speak to the Indictment.

Pen. I say, it is my place to speak to matter of Law; I am arrained a Prisoner, my Liberty, which is next to Life it self, is now concerned; you are many Mouths & Ears against me, and if I must not be allowed to make the best of my case, it is hard: I say again, unless you shew me, and the people, the Law you ground your Indictment upon, I shall take it for grated, your proceedings are meerly Arbitrary.

Obser. At this time several upon the Bench urged hard upon the Prisoner to beat him down.

Rec. The Question is, whether you are guilty of this Indictment?

Pen. The Question is not whether I am guilty of this Indictment, but whether this Indictment be legal; it is too general, and imperfect an Answer, to say it is the Common Law, unless we knew both where, and what it is: For where there is no Law, there is no Transgression; and that Law, which is not in being, is so far from being Common, that it is no Law at all.

Rec. You are an impertinent Fellow: Will you teach the Court what Law is? Its Lex non scripta, *that which many have studied Thirty or Forty Years to know; And would you have me tell you in a Moment?*

Pen. Certainly, if the Common Law be so hard to be understood, its far from being very Common; but if the Lord Coke in his Institutes, be of any consideration, he tells us, That Common Law is Common Right, and that Common Right is the great Charter Priviledges. Confirmed 9 *Hen.* 3. 29 25 *Ed.* 1. 1. 2 *Edw.* 3. 8. *Cook Inst.* 2. p. 56.

Rec. Sir, you are an troublesom Fellow, and it is not for the honour of the Court to suffer you to go on.

Pen. I have asked but one Question, and you have not answered me; though the Rights and Priviledges of every *English-man* be concerned therein.

Rec. If I should suffer you to ask Questions till to morrow morning you would be never the wiser.

Pen. That is according as the Answers are.

Rec. Sir, we must not stand to hear you talk all Night.

Pen. I design no affront to the Court, but to be heard in my just Plea; and I must plainly tell you, that if you will deny me *Oyer* of that Law, which you suggest I have broken, you do at once deny me an acknowledged right, and evidence to the whole World your resolutions to sacrifice the Priviledges of *Englishmen*, to your Sinister and Arbitrary Designs.

Rec. Take him away: My Lord, if you take not some course with this pestilent Fellow, to stop his Mouth, we shall not be able to do any thing to Night.

Major, Take him away, Take him away, turn him into the Bale-dock.

Pen. These are but so many vain Exclamations: Is this Justice or true Judgment: Must I therefore be taken away, because I plead for the Fundamental Laws of *England*? However, this I leave upon your Consciences, who are of the Jury (and my sole Judges). That if these Ancient Fundamental Laws, which relate to Liberty and Property, and (are not limitted to particular Perswasions in matters of Religion) must not be indispensibly maintained and observed; Who can say he hath right to the Coat upon his Back? Certainly our Liberties are openly to be invaded, our Wives to be ravished, our Children slaved, our Families ruined, and our Estates led away in Triumph, by every Sturdy Beggar and Malicious Informer, as their Trophies, but our (pretended) forfeits for Conscience-sake: The Lord of Heaven and Earth will be Judge between us in this matter.

Rec. Be silent there.

Pen. I am not to be silent in a case wherein I am so much concerned, and not only my self, but many ten thousand Families besides.

Observe, They having rudely haled him into the Bale-Dock, *William Mead* they left in Court, who spake as followeth.

Mead, You men of the Jury, here I do now stand, to answer

to an Indictment againſt me, which is a bundle of Stuff full of Lyes and Falſhoods; For therein I am accuſed, that I met *Vi & Armis, Illicit & Tumultuoſe*: Time was, when I had freedom to uſe a carnal Weapon, and then I thought I feared no man; but now I fear the Living God, and dare not make uſe thereof, nor hurt any man; nor do I know I demeaned my ſelf as a tumultuous perſon. I ſay, I am a Peaceable man, therefore it is a very proper Queſtion what *William Penn* demanded in this Caſe, An OYER of the Law on which our Indictment is grounded.

Rec. I have made anſwer to that already.

Mead, Turning his face to the Jury ſaid, You men of the Jury, who are my Judges, if the Recorder will not tell you what makes a Riot, a Rout, or an unlawful Aſſembly, *Cook*, he that once they called the Lord *Cook*, tells us what makes a Riot, a Rout, and an unlawful Aſſembly——A Riot is when three, or more, are met together to beat a man; or to enter forcibly into another mans Land, to cut down his Graſs, his Wood, or break down his Pales.

Obſer. Here the Recorder interrupted him, and ſaid, I thank you Sir, that you will tell me what the Law is, ſcornfully pulling off his Hat.

Mead, Thou mayſt put on thy Hat, I have never a Fee for thee now.

Brown, He talkes at randum, one while an Independant, *another while ſome other Religion, and now a* Quaker, *and next a* Papiſt.

Mead, Turpe eſt doctorum cum culpa redarguit ad ipſum.

Mayor. You deſerve to have your Tongue cut out.

Recor. If you diſcourſe on this manner, I ſhall take occaſion againſt you.

Mead, Thou didſt promiſe me, I ſhould have fair Liberty to be heard. Why may I not have the priviledge of an Engliſh-man? I am an Engliſh-man, and you might be aſhamed of this dealing.

Rec. I look upon you to be an Enemy to the Laws of England, *which ought to be obſerved and kept; nor are you worthy of ſuch Priviledges as others have.*

Mead,

Mead, The Lord is Judge betwen me and thée in this matter.

Obſer. Upon which they took him away into the Bale-dock, and the Recorder proceeded to give the Jury their Charge, as followeth.

Rec. You have heard what the Indictment is, it is for preaching to the people, and drawing a tumultuous Company after them; and Mr *Penn* was ſpeaking; if they ſhould not be diſturbed, you ſee they will go on; there are three or four Witneſſes, that have proved this, that he did preach there, that Mr. *Mead* did allow of it; after this, you have heard by ſubſtantial Witneſſes what is ſaid againſt them: Now we are upon the matter of fact, which you are to keep to, and obſerve, as what hath been fully ſworn at your peril.

Obſer. The Priſoners were put out of the Court into the Bale-dock, and the charge given to the Jury in their abſence, at which *W. P.* with a very raiſed Voice, it being a conſiderable diſtance from the Bench, ſpake.

Pen. I appeal to the Jury, who are my Judges, and this great Aſſembly, whether the proceedings of the Court are not moſt Arbitrary, and void of all Law, in offering to give the Jury their Charge in the abſence of the Priſoners; I ſay, it is directly oppoſit to, and deſtructive of the undoubted right of every *Engliſh* Priſoner, as *Cook* in the 2 Inſt. 29. on the chap. of *Magna Charta* ſpeaks.

Obſer. The *Recorder* being thus unexpectedly laſht for his extra-judicial proceedure, ſaid with an inraged ſmile.

Rec. Why, ye are preſent, you do hear, do you not?

Pen. No thanks to the Court, that commanded me into the Bale-dock; and you of the Jury take notice, that I have not been heard, neither can you legally depart the Court, before I have been fully heard, having at leaſt ten or twelve material points to offar, in order to invallid their Indictment.

Rec. Pull that Fellow down, Pull him down.

Mead, Are theſe according to the Rights and Priviledges of Engliſh-men, that we ſhould not be heard, but turned into the Bale-dock, for making our defence, and the Jury to have their Charge given them in our abſence; I ſay theſe are barbarous and unjuſt proceedings.

Rec.

Rec. Take them away into the Hole; to hear them talk all night, as they would, that I think doth not become the honour of the Court; and I think you (i.e. (the Jury) *your ſelves would be tired out, and not have patience to hear them.*

Obſer. The *Jury* were commanded to agree upon their Verdict, the Priſoners remaining in the ſtinking Hole; after an hour and halfs time eight came down agreed, but four remained above; the Court ſent an Officer for them, and they accordingly came down: The Bench uſed many unworthy Threats to the four that diſſented; and the Recorder, addreſſing himſelf to *Buſhel*, ſaid, "Sir, You are the cauſe of this diſturbance, and mani-"feſtly ſhew your ſelf an Abetter of Faction; I ſhall ſet a Mark "upon you Sir.

J. Robinſon, Mr, *Buſhel*, I have known you near this fourteen years; you have thruſt your ſelf upon this *Jury*, becauſe you think there is ſome ſervice for you; I tell you, You deſerve to be indicted more then any man that hath been brought to the Bar this day.

Buſh. No Sir *John*, There were threeſcore before me, and I would willingly have got off, but could not.

Bloodw. I ſaid when I ſaw Mr. *Buſhel*, what I ſee is come to paſs; for I knew he would never yield. Mr. *Buſhel*, we know what you are.

May. Sirrah, you are an impudent Fellow, I will put a Mark upon you.

Obſ. They uſed much menacing Language, and behaved themſelves very imperiouſly to the Iury, as perſons not more void of Iuſtice then ſober Education: After this barbarous uſage, they ſent them to conſider of bringing in their Verdict, and after ſome conſiderable time they returned to the Court. Silence was called for, and the Jury called by their names.

Cl. Are you agreed upon your Verdict?

Jur. Yes.

Cl. Who ſhall ſpeak for you?

Jur. Our Fore-man.

Cl. Look upon the Priſoners at the Bar; How ſay you? Is *William Penn* guilty of the matter whereof he ſtands indicted, in manner and form, or not guily?

Fore-

Fore-m. Guilty of Speaking in *Gracious Street.*

Cour. Is that all?

Fore-m. That is all I have in commiſſion.

Rec. You had as good ſay nothing.

May. Was it not an unlawful Aſſembly? You mean he was ſpeaking to a Tumult of people there?

Fore-m. My Lord, this was all I had in Commiſſion.

Obſer. Here ſome of the *Jury* ſeemed to buckle to the Queſtions of the Court, upon which *Ruſhel*, *Hammond*, and ſome others, oppoſed themſelves, and ſaid, They allowed of no ſuch word, as an unlawful Aſſembly, in their Verdict: At which the *Recorder*, *Mayor*, *Robinſon*, and *Bloodworth*, took great occaſion to villifie them with moſt approbious Language; and this Verdict not ſerving their turns, the *Recorder* expreſſed himſelf thus,

Rec. The Law of *England* will not allow you to depart till you have given in your Verdict.

Jur. We have given in our Verdict, and we can give in no other.

Rec. Gentlemen, you have not given in your Verdict, and you had as good ſay nothing; therefore go, and conſider it once more, that we may make an end of this troubleſome Buſineſs.

Jur. We deſire we may have Pen, Ink, and Paper?

Obſer. The Court adjourns for half an Hour; which being expired, the Court returns, and the Jury not long after.

The Priſoners were brought the Bar, and the Juries Names called over.

Cl. Are you agreed of your Verdict?

Jur. Yes.

Cl. Who ſhall ſpeak for you?

Jur. Our Fore-man.

Cl. What ſay you? Look upon the Priſoners. Is *William Penn* guilty in manner and form, as he ſtands indicted, or not guilty?

Fore-m. Here is our Verdict. Holding forth a piece of Paper to the Clark of the Peace, which follows.

We

WE the Jurors, hereafter named, do find *William Penn* to be guilty of Speaking or Preaching to an Aſſembly, met together in *Gratious-Street*, the 14th of *Auguſt* laſt, 1670. and that *William Mead* is not guilty of the ſaid Indictment.

Fore-m.	*Thomas Veer*,	*Charles Milſon*,
	Edward Buſhel.	*Gregory Walklet*,
	John Hammond,	*John Baily*,
	Henry Henley,	*William Lever*,
	Henry Michel,	*James Damask*,
	John Brightman,	*Wil. Plumſted*.

[illegible]er. This both *Mayor* and *Recorder* reſented at ſo high a rate, [illegible] exceeded the bounds of all reaſon and civility.

[illegible]What will you be lead by ſuch a ſilly Fellow as *Buſhel*? [illegible]nt canting Fellow; I warrant you, you ſhall come no [illegible] Juries in haſte; You are a Fore-man indeed, addreſ[illegible] to the Fore-man, I thought you had underſtood your [illegible]er.

[illegible]Gentlemen, You ſhall not be diſmiſt till we have a Verdict [illegible]e Court will accept; and you ſhall be lockt up, without Meat, Drink, Fire, and Tobacco; you ſhall not think thus to abuſe the Court; we will have a Verdict, by the help of God, or you ſhall ſtarve for it.

Pen. My Jury, who are my Judges, ought not to be thus menaced, their Verdict ſhould be Free, and not Compelled; the Bench ought to wait upon them, but not Foreſtaul them; I do deſire that Juſtice may be done me, and that the Arbitrary Reſolves of the Bench may not be made the meaſure of my Juries Verdict.

Rec. Stop that Prating Fellows Mouth, or put him out of the Court.

May. You have heard that he Preacht, that he gathered a company of tumultuous People, and that they do not only diſobey the Martial Power, but the Civil alſo.

Pen. It is a great Miſtake, we did not make the Tumult, but they that interrupted us; the Jury cannot be ſo ignorant

Fore-m. Guilty of Speaking in *Gracious-Street.*

Cour. Is that all?

Fore-m. That is all I have in commiſſion.

Rec. You had as good ſay nothing.

May. Was it not an unlawful Aſſembly? You mean he was ſpeaking to a Tumult of people there?

Fore-m. My Lord, this was all I had in Commiſſion.

Obſer. Here ſome of the *Jury* ſeemed to buckle to the Queſtions of the Court, upon which *Buſhel*, *Hammond*, and ſome others, oppoſed themſelves, and ſaid, They allowed of no ſuch word, as an unlawful Aſſembly, in their Verdict: At which the *Recorder*, *Mayor*, *Robinſon*, and *Bloodworth*, took great occaſion to villifie them with moſt approbious Language; and this Verdict not ſerving their turns, the *Recorder* expreſſed himſelf thus,

Rec. The Law of *England* will not allow you to depart till you have given in your Verdict.

Jur. We have given in our Verdict, and we can give in no other.

Rec. Gentlemen, you have not given in your Verdict, and you had as good ſay nothing; therefore go, and conſider it once more, that we may make an end of this troubleſome Buſineſs.

Jur. We deſire we may have Pen, Ink, and Paper?

Obſer. The Court adjourns for half an Hour; which being expired, the Court returns, and the Jury not long after.

The Priſoners were brought the Bar, and the Juries Names called over.

Cl. Are you agreed of your Verdict?

Jur. Yes.

Cl. Who ſhall ſpeak for you?

Jur. Our Fore-man.

Cl. What ſay you? Look upon the Priſoners. Is *William Penn* guilty in manner and form, as he ſtands indicted, or not guilty?

Fore-m. Here is our Verdict. Holding forth a piece of Paper to the Clark of the Peace, which follows.

We

WE the Jurors, hereafter named, do find *William Penn* to be guilty of Speaking or Preaching to an Aſſembly, met together in *Gracious-Street*, the 14th of *Auguſt* laſt, 1670. and that *William Mead* is not guilty of the ſaid Indictment.

Fore-m.	*Thomas Veer*,	*Charles Milſon*,
	Edward Buſhel.	*Gregory Walklet*,
	John Hammond,	*John Baily*,
	Henry Henley,	*William Lever*,
	Henry Michel,	*James Damask*,
	John Brightman,	*Wil. Plumſted.*

Obſer. This both *Mayor* and *Recorder* reſented at ſo high a rate, that they exceeded the bounds of all reaſon and civility.

May. What will you be lead by ſuch a ſilly Fellow as *Buſhel?* an impudent canting Fellow; I warrant you, you ſhall come no more upon Juries in haſte; You are a Fore-man indeed, addreſſing himſelf to the Fore-man, I thought you had underſtood your place better.

Rec. Gentlemen, You ſhall not be diſmiſt till we have a Verdict that the Court will accept; and you ſhall be lockt up, without Meat, Drink, Fire, and Tobacco; you ſhall not think thus to abuſe the Court; we will have a Verdict, by the help of God, or you ſhall ſtarve for it.

Pen. My Jury, who are my Judges, ought not to be thus menaced, their Verdict ſhould be Free, and not Compelled; the Bench ought to wait upon them, but not Foreſtaul them; I do deſire that Juſtice may be done me, and that the Arbitrary Reſolves of the Bench may not be made the meaſure of my Juries Verdict.

Rec. Stop that Prating Fellows Mouth, or put him out of the Court.

May. You have heard that he Preacht, that he gathered a company of tumultuous People, and that they do not only diſobey the Martial Power, but the Civil alſo.

Pen. It is a great Miſtake, we did not make the Tumult, but they that interrupted us; the Jury cannot be ſo ignorant

as to think, that we met there, with a design to disturb the civil Peace, since (1st) we were by force of Arms kept out of our lawful House, and met as near it in the Street, as their Souldiers would give us leave: And (2d) because it was no new thing, (nor with the Circumstances exprest in the Indictment, but what was usual and customary with us; tis very well known that we are a peaceable people, and cannot offer violence to any man.

Observ. The Court being ready to break up, and willing to huddle the Prisoners to their Goal, and the Jury to their Chamber, *Penn* spoke as follows.

Pen. The agreement of twelve men is a Verdict in Law, and such a one being given by the Jury, *I require the Clark of the Peace to record it, as he will answer it at his peril*: And if the Jury bring in another Verdict contradictory to this, I affirm they are perjured men in Law. (And looking upon the Jury said) You are English-men mind your Priviledge, give not away your Right.

Bush. &c. Nor will we ever do it.

Observ. One of the Jury men pleaded indisposition of Body, and therefore desired to be dismist.

May. You are as strong as any of them, starve them, and hold your Principles.

Rec. Gentlemen, you must be content with your hard fate, let your patience overcome it; for the Court is resolved to have a Verdict, and that before you can be dismist.

Jur. We are agreed, we are agreed, we are agreed.

Obser. The Court swore several persons, to keep the *Jury* all night, without Meat, Drink, Fire, or any other accommodation; they had not so much as a Chamber-pot, though desired.

Cry. O Yes, &c.

Obser. The Court adjourns till seven of the Clock next morning (being the fourth instant, vulgarly called Sunday) at which time the Prisoners were brought to the Bar, the Court sate, and the *Jury* called to bring in their Verdict.

Cry. O yes, &c.——Silence in the Court upon pain of imprisonment.

The

The Juries names called over.

Cla. Are you agreed upon your Verdict?

Jur. Yes.

Cla. Who ſhall ſpeak for you?

Jur. Our Fore-man.

Cla. What ſay you? Look upon the Priſoners at the Bar; Is *W. Penn* guilty of the matter whereof he ſtands indicted, in manner and form as aforeſaid, or not guilty?

Fore-man, *William Penn* is guilty of Speaking in *Gracious-ſtreet.*

May. To an unlawful Aſſembly?

Buſh. No my Lord, we give no other Verdict, then what we gave laſt Night; we have no other Verdict to give,

May. You are a factious Fellow, I'le take a courſe with you.

Bloodw. I knew Mr. *Buſhel* would not yield.

Buſh. Sir *Tho.* I have done according to my Conſcience.

May. That Conſcience of yours would cut my Throat.

Buſh. No my Lord it never ſhall.

May. But I will cut yours ſo ſoon as I can.

Rec. He has inſpired the Iury, he has the ſpirit of divination; methinks I feel him; I will have a poſitive Verdict, or you ſhall ſtarve for it.

Pen. I deſire to ask the Recorder one Queſtion; Do you allow of the Verdict given of *William Mead*?

Rec. It cannot be a Verdict, becauſe you are indicted for a Conſpiracy, and one being found not guilty, and not the other, it could not be a Verdict.

Pen If *Not guilty* be not a Verdict, then you make of the *Iury* and *Magna Charta* but a meer Noſe of Wax.

Mead, How! Is *Not guilty* no Verdict?

Rec. No, tis no Verdict.

Pen. I affirm that the conſent of a Iury, is a Verdict in Law, and if *W. M.* be not guilty, it conſequently follows, that I am clear ſince you have indicted us of a Conſpiracy, and I could not poſſibly conſpire alone.

Obſer: There were many Paſſages, that could not be taken, which paſt between the Iury and the Court. The Iury went up

again, having received a fresh charge from the Bench, if possible to extort an unjust Verdict.

Cry. O yes, &c —— Silence in the Court.

Cour. Call over the Jury —— Which was done.

Clark. What say you? Is *William Penn* guilty of the matter whereof he stands indicted, in manner and form aforesaid, or not guilty?

Fore-m. guilty of Speaking in *Gratious-street.*

Rec. What is this to the purpose? I say I will have a Verdict. And speaking to *E. Bushel* said, You are a factious Fellow; I will set a Mark upon you; and whilst I have any thing to do in the City, I will have an eye upon you.

May. Have you no more wit then to be led by such a pittiful Fellow? I will cut his Nose.

Pen. It is intolerable that my Jury should be thus menaced; Is this according to the Fundamental Laws? Are not they my proper Judges by the Great Charter of *England?* What hope is there of ever having Justice done, when *Juries* are threatned, and their Verdicts rejected? I am concerned to speak, and grieved to see such Arbitrary proceedings. *Did not the Lievtenant of the* Tower *render one of them worse then a Felon?* And do you not plainly seem to condemn such for factious Fellows, who answer not your ends? Unhappy are those Juries, who are threatned to be fined, and starved, and ruined, if they give not in Verdicts contrary to their Consciences.

Rec. My Lord, you must take a course with that same Fellow.

May. Stop his Mouth; Jaylor bring Fetters, and Stake him to the Ground.

Pen. Do your pleasure, I matter not your Fetters.

Rec. Till now I never understood the reason of the Policy and Prudence of the Spaniards, *in suffering the Inquisition among them: And certainly it will never be well with us, till something like the Spanish Inquisition be in* England.

Obser. The Jury being required to go together, to find another Verdict, and steadfastly refusing it (saying they could give no other Verdict then what was already given) the Recorder in great passion was running off the Bench, with

with theſe words in his Mouth." I proteſt I will ſit here no long-
"er to hear theſe things. At which the Mayor calling, Stay, ſtay, he returned, and directed himſelf unto the Iury, and ſpake as followeth.

Rec. Gentlemen, we ſhall not be at this paſs alwayes with you; you will find the next Seſſions of Parliament, there will be a Law made, that thoſe that will not conform ſhall not have the Protection of the Law. Mr. Lee, *draw up another Verdict, that they may bring it in ſpecial.*

Lee, I cannot tell how to do it.

Iur. We ought not to be returned, having all agreed, and ſet our hands to the Verdict.

Rec. Your Verdict is nothing, you play upon the Court; I ſay you ſhall go together, and bring in another Verdict, or you ſhall ſtarve; and I will have you Carted, about the CITY, as in Edward *the thirds time.*

Fore-m. We have given in our Verdict, and all agreed to it, and if we give in another, it will be a force upon us to ſave our lives.

May. Take them up.

Offic. My Lord, they will not go up.

Obſer. The Mayor ſpoke to the Sheriff, and he came off his ſeat, and ſaid.

Sher. Come, Gentlemen, you muſt go up; you ſee I am commanded to make you go.

Obſer. Upon which the Iury went up; and ſeveral ſworn to keep them without any Accommodation aforeſaid, till they brought in their Verdict.

Cry. O yes, &c. The Court adjourns till to morrow morning at ſeven of the clock.

Obſer. The Priſoners were remanded to New Gate, where they remained till next Morning, and then were brought unto the Court, which being ſate, they proceeded as followeth.

Cry. O yes, &c——Silence in the Court upon pain of impriſonment.

Cla. Set *William Penn* and *William Mead* to the Bar. Gentlemen of the Jury anſwer to your Names, *Tho. Veer, Edw. Buſhel, John Hammond, Henry Henly, Henry Michel, John Brightman, Charles Milſon, Gregory Walklet, John Baily, William Leaver,*

James

James Damask, William Plumſtead. Are you all agreed of your Verdict?

Jury, Yes.

Cla. Who ſhall ſpeak for you?

Jur. Our Foreman.

Cla. Look upon the Priſoners. What ſay you? Is *William Penn* guilty of the matter whereof he ſtands indicted, in manner and form, &c. or not guilty?

Fore-m. You have there read in writing already our Verdict in writing, and our hands ſubſcribed.

Obſer. The Clark had the Paper, but was ſtopt by the Recorder from reading of it; and he commanded to ask for a poſitive Verdict.

Fore-m. If you will not accept of it, I deſire to have it back again.

Cour. That Paper was no Verdict; and there ſhall be no advantage taken againſt you by it.

Cla. How ſay you? Is *William Penn* guilty, &c. or not guilty?

Fore-m. Not guilty.

Cla. How ſay you? Is *William Mead* guilty, &c. or not guilty?

Fore-m. Not guilty.

Cla. Then hearken to you Verdict, you ſay, that *William Penn* is not guilty in manner and form as he ſtands indicted; you ſay that *William Mead* is not guilty in manner and form as he ſtands indicted, and ſo you ſay all.

Jur. Yes, we do ſo.

Obſer. The Bench being unſatisfied with the Verdict, commanded that every perſon ſhould diſtinctly anſwer to their names, & give in their Verdict, which they unanimouſly did, in ſaying, *Not guilty*, to the great ſatisfaction of the Aſſembly.

Recorder, I am ſorry, Gentlemen, you have followed your own judgments & opinions, rather then the good and wholſom advice, which was given you; God keep my life out of your hands; but for this the Court fines you forty Marks a man, and Impriſonment till paid: At which *Penn* ſtept up towards the Bench, and ſaid.

Pen. I demand my liberty, being freed by the *Jury*.

May. No, you are in for your Fines.

Pen. Fines, for what?

May. For contempt of the Court.

Pen. I ask, if it be according to the Fundamental Laws of *England*, that any Engliſh men ſhould be fined or amerced, but by the judgment of his Peers or *Jury*; ſince it expreſly contradicts the fourteenth and twenty ninth Chap. of the *Great Charter* of *England*, which ſay, No Freeman ought to be amerced, but by the Oath of good an lawful men of the Vicinage.

Rec. Take him away, Take him away, take him out of the Court.

Pen. I can never urge the Fundamental Laws of *England*, but you cry, Take him away, take him away; But tis no wonder, *ſince the Spaniſh Inquiſition hath ſo great a place in the Recorders heart.* God Almighty who is juſt will judge you all for theſe things.

Obſer. They haled the Priſoners into the Bale-dock, and from thence ſent them to *Newgate*, for non payment of their Fines; and ſo were their *Jury*.

An Appendix, *by way of* Defence *for the* Priſoners, *as what might have been offered againſt the Indictment, and illegal proceedings of the Court thereon, had they not violently over-rul'd and ſtopp'd them.*

UPon a ſober diſquiſition into the ſeveral parts of the Indictment, we find it ſo wretchedly defective, as if it were nothing el ſe but a meer compoſition of Error, rather calculated to the malitious deſigns of the Judges, then to the leaſt verity of fact committed by the Priſoners.

To prove this, what we ſay, will be a main help to deſcover the Arbitrary proceedings of the Bench in their frequent Menaces to the Jury; as if it were not ſo much their Buſineſs to try, as to condemn the Priſoners; and that not ſo much for any Fact they had committed, as what the Court would have ſuggeſted to the Jury to have been their Fact.

§. 1. It is the conſtant Common Law of *England, That no man ſhould be taken, Impriſoned, Amerced, Diſeized of his Freehold, of his Liberties, or free Cuſtoms, but by the Judgment of his Peers, which are vulgarly called a Jury, from* Jurare, *becauſe they are ſworn to do Right.*

§. 2. The only aſſiſtance that is given the Jury, in order to a Verdict is.

Firſt, The *Evidence* given of the Fact committed, by the perſon indicted.

Secondly, The knowledge of that Law, Act, or Statute the Indictment is grounded upon, and which the Priſoners are ſaid to have tranſgreſſed.

§. 3.

§. 3. We ſhall neglect to mention here, how much they were deprived of that juſt advantage the antient equal Laws of *England* do allow; deſigning it for a concluſion of the whole, and ſhall only ſpeak here to matter of Fact and Law.

§. 4. The Evidence, you have read in the Tryal, the utmoſt import of which, is no more then this, That *William Penn* was ſpeaking in *Gratious-ſtreet*, to an Aſſembly of People, but knew not what he ſaid, which is ſo great a Contradiction, as he that runs may read it; for no man can ſay another man Preaches, and yet underſtands not what he ſaith, he may conjecture it, but that is a lame evidence in Law; it might as well have been ſworn, That he was ſpeaking of Law, Phyſick, Trade, or any other matter of civil concernment: beſides there is no Law againſt preaching what is Truth, whether it be in the Street, or in any other Place; nor is it poſſible, that any man can truly ſwear, That he preacht Sedition, Hereſie, &c. unleſs he ſo heard him, that he could tell what he ſaid.

§. 5. The Evidence further ſaith, That *W. Mead* was there, *but till being in Gratious-ſtreet be a fault, and hearing a man ſpeak, the Witneſs knows not what, be contrary to Law*, the whole Evidence is uſeleſs and impertinent; but what they want of that, they endeavour to ſupply with Indictment, whoſe parts we proceed to conſider.

Exceptions againſt the Indictment.

§. 6. It ſaith, That the Priſoners [*were met upon the 15th day of* Auguſt. 1670.] whereas their own Evidence affirms it to be upon the 14th day of *Auguſt*, 70.

§. 7. [*That they met with Force and Arms*] which is ſo great a Lye, that the Court had no better cover for it, then to tell the Jury, it was only a piece of Form, urging that the man tried for clipping of Money this preſent Seſſions had the ſame words uſed in his Indictment.

But that this Anſwer is too ſcanty, as well as it was too weak to prevail with the Jury; we deſire it may be conſidered, that the ſame words may be uſed more of courſe, and out of Form at one time then at another: And though we grant they can have little force with any Jury in a Clippers Caſe, for meer Clipping; yet they are words that give ſo juſt a ground of jealouſie, nay, that carry ſo clear an Evidence of illegallity, where they are truly proved and affirmed of any Meeting, as that they are the proper Roots from whence do ſpring thoſe Branches which render an Indictment terrible, and an Aſſembly truly to the terror of the People.

§. 8. [*Unlawfully and Tumultuouſly to diſturb the Peace*] which is as true, as what is ſaid before, (that is, as falſe) this will evidently appear to all that conſider how lawful it is to aſſemble, with no other deſign then to Worſhip God; and their calling a lawful Aſſembly an unlawful one, no more makes it ſo, then to ſay Light is Darkneſs, Black is White, concludes ſo impudent a Falſity true.

In ſhort, Becauſe to Worſhip God can never be a Crime, no Meeting or Aſſembly deſigning to Worſhip God, can be unlawful; Such as go about to prove an unlawful Aſſembly, muſt prove the Aſſemblers intent not to Worſhip God; but that no man can do; becauſe no man can know another mans intentions, and therefore its impoſſible that any ſhould prove ſuch an Aſſembly unlawful. That is properly an Unlawful Aſſembly, according to the definition of the Law, when ſeveral perſons are met together with deſign to do violence, and to do miſchief, but that Diſſenters meet with no ſuch intention, is manifeſt to the whole World, therefore their Aſſemblies are not Unlawful: He that hath only right to be worſhipped, which is God, hath only right to inſtitute how he will be worſhipped; and ſuch as worſhip him in that Way they apprehend him to have inſtituted, are ſo far from being unlawful Aſſemblies, that therein they do but expreſs the Duty they owe to God.

[*Tumultuouſly*] Imports as much as Diſorderly, or an Aſſembly full of Noiſe, Buſtle, and Confuſion, uſing force and violence, to the injury of Perſons, Houſes, or Grounds. But whether

whether Religious Diſſenters, in their peaceable Meetings, therein deſiring and ſeeking nothing more then to expreſs that Duty they owe to God Almighty, be a Tumultuous Action, or Meeting in the ſence expreſt (and which is the very definition of the Law) will be the Queſtion. Certainly ſuch as call theſe Meetings tumultuous, and to break the Peace, offer the greateſt violence to common words that can be well imagined; for they may as rightly [illegible], ſuch Perſons met Adulterouſly, Thieviſhly, &c. as to affirm they met Tumultuouſly, becauſe they are as truly applicable; in ſhort, ſuch particulars, as are required to prove them ſuch Meetings in Law, are wholly wanting.

§. 9. [*To the diſturbance of the Peace.*]

If the Diſturbance of the Peace be but matter of Form with the reſt, as it is uſually pleaded; leave out this matter of Form, and then ſee what great matter will be left.

Certainly ſuch Aſſemblies, as are not to the breach and diſturbance of the Peace, are far from being Unlawful or Tumultuary: but if the Peace be broken by them, how comes it the Evidence was ſo ſhort? We cannot believe it was in favour of the Priſoners. This may ſhew to all the reaſonable World, how forward ſome are, to brand Innocency with hateful Names; to bring a Suſpition where there was none deſerved.

§. 10. [*That the ſaid* Penn *and* Mead *met by agreement before hand made.*]

But if Perſons that never ſaw each other, nor converſe together, neither had correſpondence by any other hand, cannot be ſaid to be agreed, to any action, before it be done; then the Priſoners were far from an Agreement; for they had never Seen, Converſt, or Correſponded, directly, or indirectly, before the Officers came to diſturb the Aſſembly: we well know how far they would have ſtretcht the word, *Agreement*, or *Conſpiracy*; but God who brings to nought the Counſels of the Wicked, prevented their cruel Deſigns.

§. 11. [*That* William Mead *did abet the ſaid* William Penn *in Preaching.*]

No man can be ſaid to abet another, whilſt they are both unknown to each other, eſpecially in this caſe, where abetting follows agreeing, and agreeing ſuppoſeth fore-knowledge. Nay, the word Abet in Law ſignifies, *to command, procure, or counſel* a perſon, which *W. Mead* could not be ſaid to do, in reference to *W. Penn*, they being ſo great Strangers one to another, and at ſo great a diſtance; for the Evidence proves that he was with Lievtenant *Cook*, and Lievtenant *Cook* ſwears he could not make his way to *W. Penn* for the croud.

§. 12. [*That* W. Penn's *Preaching and Speaking cauſed a great concourſe and tumult of People to remain and continue a long time in the Street.*]

But this is ſo improbable to believe, that the very nature of a Tumult admits of no ſuch thing as Preaching; but implies a diſorderly Multitude, where all may be ſaid to ſpeak, rather then any to hear.

§. 1. [*In contempt of the King and his Laws.*]

They are ſo far from contemning the King and his Law, that they are oblieged and conſtrained by their own Principles, to obey every Ordinance of man for the Lords ſake, *but not againſt the Lord for mans ſake*, which is the queſtion in hand. Beſides their continuance there, was not in contempt, but by the permiſſion of the chief Officer preſent, that came there by the Kings authority; nor is it for the Honour of the King, that ſuch Perſons ſhould be ſaid to act in contempt of his Laws, as only meet to Honour God and his Laws.

§. 2. [*And to the great diſturbance of the Kings Peace.*]

It is far from diſturbing and breaking the Kings Peace, for men peaceably to Meet and Worſhip God; for it is then properly broken and invaded, when Force and Violence are uſed, to the hurt and prejudice of Perſons and Eſtates; or when any thing

is

is done that tends to the ſtirring up of Sedition, and begetting in People a diſlike of the civil Government: But that ſuch things are not practiſed by us in our Aſſemblies, either to offer Violence to mens Perſons or Eſtates, or to ſtir up People to Sedition, or diſlike to the civil Government, is obvious to all that viſit our Aſſemblies.

§. 3 [*To the great terror and diſturbance of the Kings liege People and Subjects, and the evil example of all others in the like caſe offending, againſt the Kings Peace, his Crown and Dignity.*]

Were theſe black Criminations as true as they are wretchedly falſe, we ſhould give as juſt an Occaſion, to loſe our Liberties, as our Cruel Adverſaries are ready to take any to deprive us unjuſtly of them. O! How notorious is it to all ſober People, that our manner of Life is far from terrifying any? And how abſurd to think that naked men (in the generality of their converſation known to be harmleſs and quiet) ſhould prove a Terror or Diſturbance to the People; Certainly, if any ſuch thing ſhould be in the time of our Meetings, it is brought with the Cruelty and Barbarous Actions of your own Souldiers; they never learned by our Example to Beat, Hale before Magiſtrates, Fine, and Impriſon for matters relating to Gods Worſhip; neither can they ſay, we are their preſidents for all thoſe *Adulterous, Prodigal, Laſcivious, Drunken, Swearing, and Prophane Acts they daily commit, and eſteem rather occaſion of brag and boaſt, then ſorrow and repentance:* No, they need not go ſo far, they have too many (God Almighty knows) of their own Superiors for their Example.

§. 4. But we can never paſs over with ſilence, nor enough obſerve the deteſtable juggle of ſuch Indictments, which we require all *Engliſh and Conſcientious Men* to mind, as they value themſelves in the like occaſion; how little a grain of Fact was proved, yet how ſpatious an Indictment was made? Had it related to the Evidence, the bulk had been excuſable; but when it only ſwelled with malicious ſcaring Phraſes, to ſuggeſt to the people, that they were the meereſt Villains, the moſt dangerous per-

Perſons; and deſigning mutually the ſubverſion of the Laws, and breach of the Peace, to the terrifying of the People, &c.

Who can chooſe but tell them of their Romance Indictment, that is ſo forged, as it truly merits another againſt it ſelf. This they childiſhly call *Form*; but had an *Italian*, or other Stranger been in Court, he would have judged it matter of Fact, as thinking it unworthy of a Kings Court, to accuſe men in termes not legally, truly, or probably due to the Fact they really had committed, as well as that no Court would practiſe it, but that which loved to deprive men of their Liberties and Lives, rather then to ſave them, *Nolence Volence.*

§. 5. Had their cruelty and juggle ended here it ſelf, they would have ſpared us the pains of any further Obſervation. But that which we have to add on the Priſoners behalf, renders their Actions ſo abominable in the ſight of Juſtice, that all honeſt and ingenious hearts muſt needs abhor their baſe Snares.

They tell the Jury. *That being but Judges of Fact only, they were to bring the Priſoners in Guilty* (that is of the Fact) *at their Peril*; *and it was the part of the Bench to judge what was Law*: So that if the Jury had brought them in *Guilty*, without any further additional Explanation (though intentionally they meant only of the Fact proved by evidence) yet the Bench would have extended it to every part of the Indictment; and by this impious deluſion, to have perjured a well-meaning Jury, and have had their barbarous Ends upon the Innocent Priſoners. But the Jury better underſtanding themſelves, brought in *Wil Penn* guilty of the Fact proved, namely, *That he was ſpeaking to ſome people met in* Gratious-Church Street, *but not of an unlawful Aſſembly, ſo circumſtantiated* (the mention of which ſtabb'd their deſign of moulding the general anſwer of *guilty* to their own ends, to the heart) nor indeed could they do otherwiſe; for as well the Jury as Priſoners, were denied to have any Law produced, by which, they might meaſure the Truth of the Indictment, and Guilt of the Fact. But becauſe the Recorder would or could not (perhaps 'tis ſo long ſince he read Law, that he may have forgotten it) we ſhall perform his part, in ſhewing what is that *Common Law of the Land*,

which

which in general, he ſaid, they were indicted for the breach, and which indeed, if rightly underſtood, is the undoubted Birth-right of every *Engliſh*-man; yea, the Inheritance of Inheritances, *Major Hæreditas venit unicui, noſtrum a Jure & Legibus, quam a Parentibus*; Cook Inſt. 2. 56.

§. 6. All the various kinds or models of Goverment, that are in the World, ſtand either upon *Will* and *Power*, or *Condition* and *Contract*, the firſt rule by men, the ſecond by Laws: It is our happineſs to be born under ſuch a conſtitution, as is moſt abhorrent in it ſelf, of all Arbitrary Government, and which is, and ever has been, moſt choice and careful of her Laws, by which all Right is obſerved.

§. 7. All Laws are either Fundamental, and ſo immutable, or Superficial, & ſo alterable, By the firſt we underſtand ſuch Laws, as injoyn men to be Juſt, Honeſt, Vertuous, to do no Wrong, to Kill, Rob, Deceive, Prejudice none; but to do as one would be done unto; to cheriſh good, and to terrifie wicked men; in ſhort, univerſal Reaſon, *which are not ſubject to any Revolutions, becauſe no emergency, time, or occaſion can ever juſtifie a ſuſpention of their execution, much leſs their utter abrogation.*

§ 8. By Superficial Laws we underſtand, ſuch Acts, Laws, or Statutes, as are ſuited to preſent Occurrances; and which may as well be abrograted, for the good of the Kingdom, as they were firſt made for it. For inſtance, thoſe Statutes that relate to Victuals, Cloaths, and Places of Trade, &c. which have ever ſtood whilſt the Reaſon of them was in force, but when that benefit, which once redounded, fell by croſs Occurrances, they ended according to that old Maxim, *Ceſſante ratione Legis, ceſſat Lex*; but this cannot be ſaid of Fundamental Law, *Till Houſes ſtand without their Foundations, and Engliſh man-kind wholly ceaſe to be*, which brings cloſe upon the point.

§. 9. There is not any Country, that has more conſtantly expreſt her care and deep ſolicitude, to the preſervation of her Fundamental Laws, then the *Engliſh* Nation; and though the

the evil of some particular times and persons have endeavoured an utter Abolition of those excellent Fundamentals, which we have before defined and defended from any just reason of revolution; yet God Almighty, who is alwayes concerned to avenge the cause of Justice, and those excellent good Laws, by which it is upheld, has by his providence befool'd their contrivances, and baffled their attempts, by bringing their designs to nought, and their persons frequently to condign punishment and disgrace; their Age no Antiquary living can assure us, unless they say, As old as Reason it self; but our own Authors are not lacking to inform us, that the Liberties, Properties, and Priviledges of the *English* Nation are very ancient.

§. 10. For *Horn* in his *Mirror of Justice* (writ in *Edward* the first's time) Fol. 1. tells us, "That after God had abated "the Nobility of the *Britans*, he did deliver the Realm to men "more humble and simple, of the Countries adjoyning, to "wit the *Saxons*, which came from the parts of *Almain* to "conquer this Land, of which men there were forty Sove- "raigns, which did rule as Companions; and those Princes did "call this Realm *England*, which before was named the Great- "er *Britan*: These after great Wars, Tribulations, and Pains, "by long time suffered, did choose a King to raign over them, "to govern the People of God, and to maintain and defend "their persons, and their good in Quiet, by the Rules of "Right; and at the beginning they did cause him to Swear "to maintain the Holy Christian Faith, and to guide his Peo- "ple by Right, withal his Power, without respect of Per- "sons, and to observe the Laws: And after, when the King- "dom was turned into an Heritage, King *Alfred*, that govern- "ed this Kingdom, about an Hundred Seventy One Years before "the Conquest, did cause the great men of the Kingdom to as- "semble at *London*; and there did ordain for a perpetual usage, "That twice in the Year, or oftner, if need should be, in time "of Peace, they should assemble at *London* in Parliament; for "the Government of Gods People, that men might live in "quiet, and receive Right by certain Usages, and holy Judg- "ments.

The

"In which Parliament (ſaith our Authour) the Rights and "Prerogatives of the Kings and of the Subjects are diſtinguiſh-"ed and ſet apart; and particularly by him expreſſed, too tedious here to inſert; among which Ordinances we find, "That no man "ſhould be impriſoned, but for a capital Offence. And if a man "ſhould detain another in Priſon, by colour of Right (where "there was none) till the party impriſoned died: he that kept "him in Priſon ſhould be held guilty of Murder, as you may read pag. 33. And pag. 36. "He is declared guilty of Homicide, "by whom a man ſhall die in Priſon, whether it be the Judges, "that ſhall too long delay to do a man Right, or by cruelty of "Goalers, or ſuffering him to die of Famine; or when a man is "adjudged to do Penence, and ſhall be ſurcharged by his Goaler "with Irons, or other pain, whereof he is deprived of his "Life. And in p. 149. That by the Ancient Law of *England* it "was Fellony to detain a man in priſon, after ſufficient Bale "offered, where the party was pleviſable; every perſon was "pleviſable, but he that was appealed of Traſon, Murder, "Robbery, or Burglary, pag. 35. None ought to be put in "common Priſons, but only ſuch as were ATTAINTED, "or principally APPEALED or INDICTED of ſome "capital Offence, or ATTAINTED of falſe or wrong-"ful Impriſonment; ſo tender have the ancient Laws and "Conſtitutions of this Realm been of the Liberty of their "Subjects perſons, that no man ought to be Impriſoned, "but for a capital Offence, as, *Treaſon*, *Murder*, *Robbery*, or "*Burglary*.

§. 11. Nor is *Lambert* ſhort in his excellent tranſlation of the *Saxon* Laws, from *King Ina*'s time, 712. to *Hen.* 3. 1100. In deſcribing to us the great Obligation, and ſtrong Condition, the people were wont to put upon their Kings, *To obſerve the antient fundamental Laws, and free Cuſtoms of this Land*, which were handed down from one Age to another. And in the 17th chapter of *Edw.* the Confeſſors Laws, the mention there made of a Kings duty is very remarkable, that if he break his Oath, or performed not his Obligation (*Nec nomen Regis in eo conſtabit*) The

 ſame

ſame *Lambard* further tells us, That however any may affirm *William* of *Normandy* to be a Conquerer; *He was received by the people as* Edwards *Succeſſor, and by ſolemn Oath taken, to maintain unto them the ſame Laws that his Kinſman* Edward *the Confeſſor did*; this Doctrine remained in the general, unqueſtioned, to the reign of King *John*, who imperiouſly thought that *Voluntas Regis*, and not *Salvus Populi*, was *Suprema Lex*, or the *Kings Will* was the *Superam Law*, and not the *Peoples Preſervation*; till the incenſed Barons of that time, betook themſeves to a vigorous defence of their ancient Rights and Liberties, and learnt him to keep thoſe Laws by a due reſtraint and timely compulſion, which his former invaſion of them evidenced to the World he would never have done willingly.

Sect. 12. The Propoſals and Articles of Agreement, with the Pledges given to the Barons, on the behalf of the People by the King, were confirm'd in *Hen.* the 3ds time, his Son and Succeſſor, *When the abuſed, ſlighted, and diſregarded Law, by his Father*, were thought fit to be reduced to record, *that the People of* England *might not forever after be to ſeek for a written recorded Law, to their defence and ſecurity*; for *Miſera ſervitus eſt ubi jus eſt vagum aut incognitum*; and ſo we enter upon the *Grand Charter* of *Liberty* and *Priviledge*, in the Cauſe Reaſon, and End of it.

Sect. 1. We ſhall firſt rehearſe it, ſo far as we are concerned, (with the Formalities of *Grant* and *Curſe*) and ſhall then ſay ſomething as to the Cauſe, Reaſon, and End of it.

A Reherſal of the Material Parts of the Great Charter of England.

HEnry, *by the Grace of God, King of* England, *&c. To all Arch-Biſhops, or Earls, Barons, Sheriffs, Proveſts Officers, and to all Bailiffs, and our faithfull Subjects, who ſhall ſee this preſent Charter, greeting.* Know ye, That we unto the honour of Almighty God, and for the Salvation of the Souls of our Progenetors, and our Succeſſors, Kings of *England*, to the advancement of holy Church, and amendment of our Realm, of our meer and free will have given and granted *to all Arch-Biſhops, &c. and to all Free-men of this our Realm*, theſe Liberties under-written, to be holden and kept in this our Realm of *England* for evermore. 9 H. 3. confirm. 28 Ed. 3.

We have granted and given to all Free-men of our Realm, for us and our Heirs for evermore, theſe Liberties under-written, to have and to hold to them, and to their Heirs, of us and our Heirs fore-nam'd. Chap. the for of anci ent Act &c. Co. 2 Inſt. Fol. 2. Chap. 1.

A Free-man ſhall not be Amerced for a ſmall fault, *but after the quantity of the fault:* and for a great fault, *after the manner thereof*, ſaving to him his Contenements or Free-hold. And a Merchant likewiſe ſhall be amerced, *ſaving to him his Merchandize*; and none of the ſaid Amercements ſhall be aſſeſſed, *but by the Oath of good and honeſt men of the Vicinage.*

No Free-man ſhall be taken, or impriſoned, nor be diſſeized of his Free-hold, or Liberties, or free Cuſtoms or be Outlawed, or Exiled, or any other wayes deſtroyed; nor we ſhall not paſs upon him, nor condemn him, *but by lawfull* Cha. 29

judgement of his Peers, or by the Law of the Land; *we ſhall ſell to no man, we ſhall deny nor defer to no man either Juſtice or Right.*

And to all theſe Cuſtoms, Liberties aforeſaid, which we have granted to be holden within this our Realm, as much as appertaineth to us and our Heirs we ſhall obſerve; and all men of this our Realm, as well Spiritual as Temporal, (as much as in them is) ſhall obſerve the ſame againſt all perſons in likewiſe. And for this our Gift, and Grant of theſe Liberties, and for other contained in our Charter of Liberties of our *Forreſt*, the Arch-Biſhops, Biſhops, Abots, Priors, Earls, Barons, Knights, Free-holders, and other our Subjects, have given unto us the fifteenth part of all their moveables; *And we have granted unto them on the other part, that neither we, nor our Heirs, ſhall procure or do any thing whereby the Liberties in this Charter contained ſhall be infringed or broken*; and if any thing be procured by any perſon contrary to the Premiſes, *ſhall be had of no force nor effect*. Theſe being Witneſſes, *Boniface* Arch-Biſhop of *Canterbury*, &c. We ratifying and approving thoſe Gifts and Grants aforeſaid, confirm and make ſtrong all the ſame, *for us and our Heirs perpetually*, and by the Tenor of theſe Preſents do renew the ſame willingly; and granting for us and our Heirs, that this Charter, in all and ſingular his Articles for evermore ſhall be ſtedfaſtly, firmly, and inviolably obſerved. *And if any Article in the ſame Charter contained, yet hitherto peradventure hath not been obſerved, nor kept, we will, and by our Authority Royal command from henceforth firmly they be obſerved.* Witneſs, &c.

Sarah Pacey

The

The Sentence of the Curſe given by the Biſhops, with the Kings conſent, againſt the Breakers of the great Charter.

IN *the year of our Lord* 1253. *the third day of* May, *in the great Hall of the King at* Weſtminſter, *in the preſence, and by the conſent of the Lord* Henry, *by the Grace of God King of* England, *and the Lord* Richard, *Earl of* Cornwall, *his Brother*; Roger Bigot, *Earl of* Norfolk, *Marſhal of* England; Humphry, *Earl of* Hereford; Henry, *Earl of* Oxford; John, *Earl Warren*; *and other Eſtates of the Realm of* England: *We* Boniface, *by the Mercy of God, Arch-Biſhop of* Canterbury, *Primate of* England, *F. of* London, H. *of* Ely, S. *of* Worceſter, E. *of* Lincoln, W. *of* Norwich, P. *of* Hereford, W. *of* Salesbury, W. *of* Durham, R. *of* Exceſter, M. *of* Carlile, W. *of* Bath, E. *of* Rocheſter, T. *of St.* Davids, *Biſhops, apparelled in Pontificals, with Tapers burning, againſt the Breakers of the Churches Liberties, and of the Liberties, and other Cuſtoms of this Realm of* England, *and namely theſe which are contained in the Charter of the Common Liberties of* England, *and Charter of the* Forreſt, *have denounced Sentence of Excommunication in this Form, By the Authority of Almighty God, the Father, the Son, and the Holy Ghoſt &c. of the bleſſed Apoſtle* Peter *and* Paul, *and of all Apoſtles, and of all Martyrs, of bleſſed* Edw. *King of* England, *and*

of

of all the Saints of Heaven, We Excommunicate and Accurſe, and from the benefit of our holy Mother the Church we ſequeſter all thoſe that hereafter willingly and maliciouſly deprive or ſpoil the Church of her Right; and all thoſe that by any craft, or willingneſs, do violate, break, diminiſh, or change the Churches Liberties, and free Cuſtoms contained in the Charters of the common Liberties, and of the Forreſt *granted by our Lord the King to Arch-Biſhops, Biſhops, and other Prelates of* England, *and likewiſe to the Earls, Barons, Knights, and other Free-holders of the Realm; and all that ſecretly and openly, by deed, word or counſel do make Statutes, or obſerve them being made, and that bring in Cuſtoms to keep them, when they be brought in, againſt the ſaid Liberties, or any of them, and all thoſe that ſhall preſume to judge againſt them; and all and every ſuch perſon, before-mentioned, that wittingly ſhall commit any thing of the premiſes, let them well know that they incur the aforeſaid ſentence,* ipſo facto.

A Confirmation of the Charters and Liberties of *England*, and of the *Forreſt*, made the twenty fifth year of *Edward* the firſt.

Edward, by the Grace of God, King of *England*, Lord of *Ireland*, Duke of *Guyan*, To all thoſe that theſe preſent Letters ſhall hear or ſee, greeting. Know ye that we to the honour of God, and to the profit of our Realm, have granted for us, and our Heirs, and the Charter of Liberties, and the Charter of Forreſt, which were made by common aſſent of all the Realm, in the time of King *Henry* our Father, ſhall be kept in every point, without breach; and we will that the ſame Charters ſhall be ſent under our Seal, as well to our Juſtices of the Forreſt, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it ſhall be contained, that they cauſe the aforeſaid Charters to be publiſhed, and to declare to the People, that we have confirmed them in all points; and that our Juſtices Sheriffs, Mayors, and other Miniſters, which under us have the Laws of our Land to guide, ſhall allow the ſame Charters pleaded before them in Judgment, in all their points; that is, to wit, the Great Charter, as the Common Law, and the Charter of our Forreſt, for the *W[illegible]* of our Realm.

And we will that if any Judgment be given from henceforth

forth, contrary to the points of the Charter aforeſaid, by the Juſtices, or by any other of our Miniſters that hold Plea before them, againſt the points of the Charters, it ſhall be undone, and holden for naught.

And we will that the ſame Charters ſhall be ſent under our Seal to Cathedral Churches throughout our Realm, there to remain, and ſhall be read before the people two times by the year.

And that all Arch-biſhops and Biſhops ſhall pronounce the Sentence of Excommunication againſt all thoſe that by word, deed or counſel do contrary to the foreſaid Charters, or that in any point do break or undo them; And that the ſaid Curſes be twice a year denounced and publiſhed by the Prelates aforeſaid; and if the ſame Prelates, or any of them be remiſs in the denunciation of the ſaid Sentences, the Arch-biſhops of *Canterbury* and *York*, for the time being, ſhall compel and diſtrain them to the execution of their duties in form aforeſaid.

The

The Sentence of the Clergy againſt the Breakers of the Articles above-mentioned.

IN the Name of the Father, the Son, and the Holy Ghoſt, Amen: Whereas our Soveraign Lord the King, to the honour of God, and of holy Church, and for the common profit of the Realm, hath granted for him, and his Heirs for ever theſe Articles above-written: Robert *Areh-Biſhop of* Canterbury, *Primate of all* England, *admoniſhed all his Province once twice and thrice, becauſe that ſhortneſs will not ſuffer ſo much delay, as to give knowledge to all the People of* England, *of theſe preſents in writing: We therefore enjoyn all Perſons, of what eſtate ſoever they be, that they, and every of them, as much as in them is, ſhall uphold and maintain theſe Articles granted by our Soveraign Lord the King; in all points: And all thoſe that in any point do reſiſt or break, or in any manner hereafter Procure, Counſel, or in any wiſe Aſſent to Teſtifie or Break thoſe Ordinances, or go about it, by word or deed, openly or privily, by any manner of pretence or colour; we, the aforeſaid Arch-Biſhop, by our Authority in this Writing expreſſed, do Excommunicate and Accurſe, and from the Body of our Lord Jeſus Chriſt, and from all the Company of Heaven, and from all the Sacraments of Holy Church do ſequeſter and exclude.*

We may here ſee, that in the obſcureſt Times of ſottiſh Popery, they were not left without a ſence of Juſtice, and the neceſſity of *Liberty* and *Property*, to be inviolably enjoy'd which brings us to the cauſe of it.

1ſt Then cauſe of this famous Charter, was, as we have already ſaid, the Incroachments that were made by ſeveral Miniſters of precedent Kings, that almoſt became Cuſtomary, and which had neer extinguiſht the free Cuſtoms due to Engliſhmen : How great care it coſt our Anceſtors, it unbecomes us to ignore, or by our ſilence to neglect ; It was that *Yoak* and *Muzzle*, which failed not to diſ-able many rageing Bears, from entring *the pleaſant Vineyard of Engliſh Freedoms*, that otherwiſe would not have left a fruitful Vine in being. Anon we may give the Reader an account of ſome, with their Wages as well as Works.

2d The Reaſon of it, is ſo great, that it ſeems to be its own. It is the very *Image* and *Expreſſion of Juſtice*, *Liberty*, and *Property* ; Points of ſuch eminent importance , as without which no Goverment can be ſaid to be reaſonable, but arbitrary, and tyrannical. It allows every man that liberty God and nature have given him, and the ſecure poſſeſſion of his property, from the In-road or Invaſion of his Neighbour, or any elſe of that conſtitution. It juſtifies no man in a fault, only it provides equal and juſt ways to have the Offender tryed, conſidering the malice of many Proſecutors, and the great value of Liberty and Life.

3d The End of it was the moſt noble of any earthly projection, to wit, *The refixing of thoſe ſhaken Laws*, held for many hundred years, by conſtant claim, that they living might be reenſtated in their primitive liberty, and their poſterity ſecured in the poſſeſſion of ſo great a happineſs.

Amongſt thoſe many rich Advantages , that accrew to the free people of *England* , from this great Charter ; and thoſe many confirmatory Statutes of the ſame, we ſhall preſent the Reader with the ſight of ſome few, that may moſt properly fall, under the conſideration and inquiry of theſe preſent times, as found in our Common Law Books,

1ſt That

1ſt [*That every Engliſh-man is born free.*]

2d [*That no ſuch free-man ſhall be taken, attached, aſſeſſed, or impriſoned, by any Petition or Suggeſtion to the King or his Council, unleſs by the Indictment and preſentment of good and lawful men, where ſuch deeds be done*] 5 Edw. 3. chap. 9. 25 Ed. 3. chap. 4. 17 R. 2. chap. 6. Rot. Parl. 42 Ed. 3. Cook 2 Inſt. 43.

3d [*That no Free-man ſhall be diſſeized of his Freehold, or Liberties, or Free-Cuſtoms, &c.* Hereby is intended, ſaith *Cook*, That *Lands, Tenements, Goods, and Chattels*] ſhall not be ſeized into the Kings hands contrary to this great Charter, &c. 43 *Aſſ.* page 12. 43 *Edward* 3. *Cook* 2. Inſtitu. 32. Neither ſhall any ſuch Free-man be put from his Livelyhood without anſwer, *Cook* 2 Inſt. 47.

4ly [*That no Free-man ſhall be outlawed*] *unleſs he ſhroud, and hide himſelf voluntarily from the juſtice of the law.* 2 & 3 Phil. & Mar. Dier 114. 145.

5ly [*No Free-man ſhall be exiled*] *Cook* ſaith, There are but two Grounds, upon which any man may be exiled: One by Act of Parliament (ſuppoſing it not contrary to the Great Charter) ——the other in caſe of abjuration, for fellony by the Common Law, &c. *Cook* 2. Inſt. 47.

6ly [*No Free-man ſhall be deſtroyed*, that is, He ſhall not be *fore-judged of Life, Limb, Diſherited, or put to Torture, or Death*] Every Oppreſſion againſt Law, by colour of any uſurped Authority, is a kind of Deſtruction, and it is the Worſt Oppreſſion that is done by colour of Juſtice. *Cook* Inſtitution 2. 48.

7ly [*That no Free-man ſhall be thus taken, or impriſoned, diſſeized. out-lawed, exiled, or deſtroyed of his Liberties, Free-holds, and Free-Cuſtoms, but BY THE LAWFUL JUDGMENT*

OF HIS PEERS] (vulgarly called *Jury.*) So that the Judgment of any fact or perſon, is by this fundamental Law, referred to the Breſts, and Conſciences of the Jury; its rendred in Latine *PER LEGALE JUDITIUM*, that is Lawful Judgment; from whence it is to be obſerved, that the Judgment muſt have Law in it, and be according to Law, which cannot be where they are not Judges, how far the fact is legal, or the contrary; *Juditium quaſi Juris Dictum* [*The Voice of Law and Right*] And therefore is their Verdict not to be rejected becauſe it is ſuppoſed to be the Truth, according to their Conſciences: For *Verdict* from *vere dictum*, is *quaſi dictum veritatis*, [*or a true Saying or Judgment*] 9 *Hen.* 3. 29. *Cook Inſt.* 1. 32. *Inſt.* 4. 207. *Cook* ſays, that by the word LEGALE three things are implyed.

(1ſt.) *That this was, by Law, before the Statute, and therefore this Statute but declaratory of the Antient Law.*

(2d) That their Verdict muſt be legally given; wherein is to be obſerved. (1ſt) *The Jury ought to hear no Evidence, but in the hearing and preſence of the Priſoner.* (2d) *That they cannot ſend to ask any Queſtion in Law of the Judges, but in the preſence of the Priſoner*; *for*, De facto Jus oritur.

(3d) The Evidence produced by the Kings Councel, being given, *the Judges cannot collect the Evidence, nor urge it by way of charge to the Jury, nor yet confer with the Jury about the Evidence but in the preſence of the Priſoner*, Cook Inſt. 2. 49.

8th [*Or by the Law of the Land*] It is *a Synonimous* expreſſion, importing no more *then by a trial of Peers or a Jury*; for it is ſometimes rendred not (*or*) diſ-junctively, but (*and*) which is connectively; however, it can never ſignifie any thing contrary to the old way of trying by Peers; for then it would be connected to a contradiction.

Beſides, *Cook* well obſerves, that in the 4th Chap. of the 25th *Edw.* 3. *Per Legem Terræ*, imports no more then a Tryal by due proceſs, and writ Original at Common Law, which cannot be

be without a *Jury*; therefore, *Per Judicium parum & per Legem Terræ*, ſignifie the ſame priviledge unto the people, *Cook Inſt.* 2. pag. 50.

Thus have we preſented you with ſome of thoſe Maxims of Law, dearer to our Anceſtors, then life, *Becauſe they are the defence of the Lives and Liberties of the People of* England; it is from this 29th cha. of the Great Charter; *Great*, not for its Bulk, but the Priviledges in it; as from a ſpatious Root, that ſo many fruitful Branches of the Law of *England* ſprings, if *Cook* may be credited. But how *ſacred* ſoever they have been eſteemed, and ſtill are by noble and juſt minds, yet ſo degenerate are ſome, in their proceedings, that conſcious to themſelves of their baſeneſs, they will not dare ſtand the touch of this great Charter, and thoſe juſt Laws grounded upon it, of which number we may truly rank the Mayor, and Recorder of *London*, with the reſt of their wiſe Companions, in their late Seſſions, at the Old Baily, upon the occaſion of the Priſoners.

Firſt, The Priſoners were taken, and impriſoned without Preſentment of good and lawful men of the Vicinage, or the Neighbourhood, *but after a Military and Tumultuous manner, contrary to the grand Charter.*

2d *They refuſed to produce the* Law *upon which they proceeded*; leaving thereby the Priſoners, *Jury*, and the whole Aſſembly in the dark.

3d *They refuſed the Priſoners to plead*, and directly withſtood that great Priviledge, mentioned in the firſt Chap. 25 *Edw.* 1. *Where all Juſtices, Mayors, Sheriffs, and other Miniſters that have the Laws of the Land, to guide them, are required to allow the ſaid Charter to be pleaded in all its points, and in all cauſes that ſhall come before them in Judgment.* For no ſooner did *William Penn*, or his Fellow-Priſoner, urge upon them the great Charter, and other good Laws, but the Recorder cryed, Take him away, Take him away, put him into the Bale-dock or Hole; From which

the

the Recorder can never deliver himself, unless it be by avowing; *the Laws are not his Guide, and therefore does not suffer them to be pleaded before him in Iudgment.*

4ly *They gave the Iury their charge, in the Prisoners absence, endeavouring highly to insence the Iury against them.*

5ly The verdict (being given, which is in Law, DICTUM VERITATIS (*The voice of Truth her self*) because not suitable to their humor) *They did five times reject it, with many abusive imperious, and menacing Expressions to the Jury,* (such as no President can afford us) as if they were not the only constituted Iudges by the Fundamental Laws of the Land, *but meer Ciphers only to signifie something behind their Figures.*

6ly Though the Prisoners were cleared by their Iury, yet were they continued for the non-payment of their Fines, laid upon them, for not pulling off their Hats, in which the Law is notoriously broken.

(1st) *In that no man shall be amerced, but according to the Offence; and they have fined each forty Marks.*

(2d) *They were not merced by any Jury but at, the will of an incensed Bench.*

Besides there is no Law against the Hat, and where there is no Law there can be no Transgression, and consequently no legal Amercement or Fine, 9 *Hen.* 3. chap. 14. But how the Prisoners were trapaned into it, is most ridiculous on the side of the Contrivers, that finding their Hats off, would have them put on again by their Officers, to fool the Prisoners with a tryal of putting them off again, which Childish Conceit not being gratified they fined them the forty Marks apiece.

7ly Instead of accepting their Verdict as good in Law, and for the true decission of the matter, according to the great Charter (that constitutes them proper Judges, and which bears them out with many other good Laws, in what they agreed to as a Verdict) the Court did most illegally and tyran-

tyrannically fine and impriſon them, as in the Tryal was expreſt. And that notwithſtanding the late juſt reſentment of the Houſe of Commons, in Iudge *Keelings* Caſe, where they reſolved, that the preſident and practice of Fining, and Impriſoning *of Iuries, for their Verdicts, were illegal.* And here we muſt needs obſerve two things.

(1ſt) That the Fundamental Laws of *England* cannot be more ſlighted, and contradicted in any thing (next Engliſhmens being quite deſtroyed) then in not ſuffering them to have that equal *medium*, or juſt way of tryal, that the ſame Law has provided, *which is by a Iury.*

(2d) That the late proceeding of the Court, at the Old Baily, is an evident Demonſtration, that Iuries are now but *meer Formality*, and that the partial charge of the Bench muſt be the Verdict of the Iury; *for if ever a Rape were attempted on the Conſcience of any Iury, it was there.* And indeed the ignorance of Iurors, of their authority by Law, is the only Reaſon of their unhappy cringing to the Court, and being ſcared into an *Anti-Conſcience Verdict*, by their lawleſs threats.

But we have lived to an Age, ſo deboiſt from all humanity and reaſon, as well as Faith and Religion, that ſome ſtick not to turn *Butchers to their own Priviledges*, *and Conſpirators againſt their own Liberties.* For however *Magna Charta* had once the reputation of a ſacred unalterable Law, and few hardned enough, to incur and bear the long Curſe, that attends the Violaters of it, yet it is frequently objected now, that the benefits there deſigned *are but temporary*, and therefore lyable to alteration, as other Statutes are. *What Game ſuch Perſons play at may be lively read, in the attempts of* Dyoniſius, Phalaris, *&c. which would have Will and Power be the peoples Law.*

But that the Priviledges due to *Engliſh*-men, by the great Charter of *England*, have their Foundation in Reaſon and Law; and that thoſe new *Caſſandrian* wayes, to introduce *Will* and *Power* deſerve to be deteſted by all perſons profeſſing ſence and honeſty, and the leaſt Allegiance to our *Engliſh* Govern-

Government ; we ſhall make appear from a ſober conſideration of the nature of thoſe Priviledges contained in that *Charter*.

(1) The Ground of alteration of any Law in Government (where there is no invaſion) ſhould ariſe from the univerſal *diſcommodity of its continuance*, but there can be no diſprofit in the continuance of *Liberty* and *Property*, *therefore there can be no juſt ground of alteration.*

(2) No one *Engliſh*-man is born Slave to another, neither has the one a right to inherit the ſweat & benefit of the others labour (without conſent) *therefore the Liberty and Property of an* Engliſh-*man*, *cannot reaſonably be at the will and beck of another*, *let his quality and rank be never ſo great.*

(3) *There can be nothing more unreaſonable then that which is partial*, but to take away the LIBERTY and PROPERTY of any (which are natural Rights) without breaking the Law of *nature* (and not of Will and Power) is manifeſtly partial, *and therefore unreaſonable.*

(4) If it be juſt and reaſonable *for men to do as they would be done by*, then no ſort of men ſhould invade the Liberties and Properties of other men, becauſe they would not be ſerved ſo themſelves.

(5) Where Liberty and Property are deſtroyed, there muſt alwayes be a ſtate of force and war, which however pleaſing it may be unto the *Invaders*, it will be eſteemed intolerable by the *Invaded*, who will no longer remain ſubject in all humane probability, then while they want as much power to free themſelves, as their Adverſaries had to enſlave them : *The troubles, hazards ill-conſequences, and illegality of ſuch attempts, as they have declined by the moſt prudent in all Ages, ſo have they proved moſt caſie to the moſt ſavage of all Nations, who firſt or laſt have by a mighty Torent freed themſelves, to the due puniſhment and great infamy of their Oppreſſors :* ſuch being the advantage, ſuch the diſad-

diſadvantage which neceſſarily do attend the fixation, and removal of Liberty and Property.

We ſhall proceed to make it appear, that *Magna Charta* (as related by us) imports nothing leſs then their perſervation.

No Free-man ſhall be taken, or impriſoned or be diſſeiſſed of his Free-holds, or Liberties, or free Cuſtoms, or be out-lawed, or exiled, or any other wayes deſtroyed; nor will we upon him paſs, nor condemn him, but by the lawful judgment of his Peers, &c.

A Free-man ſhall be amerced for a ſmall fault, but after the manner of the fault; and for a great fault, after the greatneſs thereof, and none of the ſaid amercement ſhall be aſſeſſed, but by the Oath of good and lawfull men of the Vicinage.

Firſt, It aſſerts *Engliſh-men* to be free; *that's Liberty.*

Secondly, That they have Free-holds, *that's Property.*

Thirdly, That Amercement, or Penalties ſhould be proportioned to the faults committed, *Which is Equity.*

Fourthly, That they ſhall loſe neither, but when they are adjudged to have forfeited them, in the judgment of their honeſt neighbours, according to the Law of the Land, *which is lawfull judgment.*

It is eaſie to diſcern to what paſs the Enemies of the *great Charter* would bring the People of *England.*

Firſt, They are now Free-men, *but they would have them Slaves.*

Secondly, They have now right unto their *Wives, Children,* and *Eſtates,* as their undoubted property; *but ſuch would rob and ſpoil them of all.*

Thirdly, Now no man is to be amerced, or puniſhed, but ſuitably to his fault; *whilſt they would make it ſuitable to their revengful minds, and unlimitted wills.*

Fourthly, Whereas the Power of Judgment lies in the Breſts and Conſciences of twelve honeſt Neighbours; *they would have it at the diſcretion of Mercenary Judges:* To which, we cannot chuſe but add, That ſuch diſcourſes manifeſtly ſtrike at this preſent conſtitution of Government; for it being founded upon the *Great Charter* (which is the Antient Common Law of the Land) as upon its beſt Foundation; none can deſign the cancelling of the *Charter*, but they muſt neceſſarily intend the extirpation of the *Engliſh Government*; for where the cauſe is taken away the effect muſt conſequently ceaſe. And as the reſtauration of our Antient *Engliſh* Laws, by the Great Charter, was the ſoveraign Balſom which cured our former Breaches, ſo doubtleſs will the continuation of it prove an excellent prevention to any future diſturbances.

But ſome are ready to object, *That the Great Charter conſiſting as well of Religious as Civil Rights, the former having received an alteration, there is the ſame reaſon, why the latter may have the like.*

To which we anſwer, That the reaſon of alteration cannot be the ſame, therefore the conſequence is falſe. The one being matter of Opinion, about Faith and Religious Worſhip, which is as various, as the unconſtant apprehenſions of men; but the other is matter of ſo immutable Right, and Juſtice, that all Generations (however differing in their religious Opinion) have concentured and agreed to the Certainty, Equity, and indiſpenſable Neceſſity of perſerving theſe Fundamental Laws; ſo that *Magna Charta* hath not riſen and fallen with the differing religious Opinions that have been in this Land, but have ever remained, as the ſtable Right of every individual *Engliſh*-man, purely as an *Engliſh*-man. Otherwiſe, If the civil Priviledges of the People, had fallen with the pretended Religious Priviledges of the *Popiſh Tyranny* at the firſt Reformation (as muſt needs be ſuggeſted by this Objection) our caſe had ended here, That we had obtained a Spiritual Freedom, at the coſt of a Civil Bondage;

which

which certainly was far from the intention of the first Reformers and probably an unseen consequence, by the Objectors to their idle Opinion.

In short, There is no time, in which any man may plead the necessity of such an Action; as is unjust in its own nature, which he must unavoidably be guilty of, *That doth deface or cancel that Law by which the justice of Liberty and Property is confirmed and maintained to the People.* And consequently, no person may legally attempt the Subversion, or Extenuation of the force of the *Great Charter*, We shall proceed to prove from instances out of both.

1st *Any Judgment given contrary to the said Charter, is to be undone, and holden for nought.* 25 Edw. *chap.* 2.

2d *Any that by VVord, Deed, or counsel, go contrary to the said* Charter, *are to be excommunicated by the Bishops: And the Arch-Bishops of* Canterbury *and* York, *are bound to compel the other Bishops to denounce Sentence accordingly, in case of their remissness, or neglect*; which certainly hath relation to the Sate rather then the Church; *since there was never any necessity of compelling the Bishops to denounce Sentence in their own case, though frequently in the people.* 25 Edw. 1. *chap.* 4.

3d *That the great* Charter *and* Charter *of Forrest, be holden and kept in all Points; and if any Statute be made to the contrary, that it shall be holden for nought.* 43 Edw. 3. c. 1. Upon which *Cook*, that famous English Lawyer, said, *That albeit, Judgment in the Kings Courts are of high regard in Law, and* Judicia *are accounted as* Juris Dicta; *yet it is provided by Act of Parliament, That if any Judgment be given contrary to any of the Points of the great Charter, it shall be holden for nought.*

He further saith, *That upon the Statute of the* 25*th* Ed. 1. *chap.* 1. *That this great* Charter *and the* Charter *of Forrest, are properly the Common Law of the Land, or the Law is common to all the People thereof.*

4ly Another Statute runs thus, *If any Force come to disturb the Execution of the Common Law, ye shall cause their Bodies to be Arrested and put into Prison; Ye shall deny no man Right by the Kings Letters, nor counsel the King anything that may turn to his Damage or Disherison,* 18 Edw. 3 *chap.* 7. *Neither to delay Right by any command under the Great or Little Seal.* This is the Judges Charge and Oath. 2 *E.* 3. c. 8. 14 *Ed* 3. 14. 11 *R.* 2. c. 10.

5ly Such care hath been taken, for the preservation of this Great Charter, that in the 15th of *Edward* 1. It was enacted, *That Commissioners should issue forth, that there should be chosen in every Shire Court, by the Commonalty of the same Shire, three substantial Men, Knights, or other lawful, wise, and well-disposed Persons, to be Justices, which shall be assigned by the Kings Letters Patents, under the Great Seal, to hear and determin (without any other Writ, but only their Commission) such Plaints as shall be made upon all those that commit, or offend against any point contained in the aforesaid* Charters, 28 Ed. 1. chap. 1.

6ly the necessity of preserving these *Charters*, hath appeared in nothing more, than in the Care they have taken to confirm them; which as *Cook* observes, Hath been by thirty two Parliaments *Confirmed, Established*, and *Commanded to be put in Execution*, with the condign punishment they had inflicted upon the Offenders. *Cooks Proem*, to the second Book of his Inst.

7ly That in the notable Petition of *Right*, many of these great Priviledges, and free Customs, contained in the aforesaid Charters, and other good Laws, are Recited and confirmed 3 Car. 2.

8ly The late King, in his Declaration at *New-Market*, 1641. acknowledged the Law to be *the Rule of his Power*. By which he doubtless intended *Fundamental Laws*; since it may be the

great

great advantage of Countries, ſometimes to ſuſpend the execution of *temporary Laws.*

Having ſo manifeſtly evidenced that *Venerable Eſteem*, our Anceſtors had of that *Golden Rule*, (the Great Charter) with their deep ſolicitude, to preſerve it from the defaceing of Uſurpation and Faction. We ſhall proceed to give an account of their juſt Reſentment, and earneſt Proſecution againſt ſome of thoſe, who in any Age have adventured, to undermine that antient Foundation, by introducing an Arbitrary way of Government.

1ſt As Juditious *Lambard* reports in his *Saxon* Tranſlation, *That the Kings in thoſe dayes, were by their Coronation Oaths obliged to keep the Antient Fundamental Laws and Cuſtoms of this Land* (of which this great Charter is but declaratory) *ſo did* King Alfred (reputed the moſt famous Compiler of Laws amongſt them) *give this diſcovery of his Indignation againſt his own Judges, for Acting contrary to thoſe Fundamental Laws, that he commanded the execution of forty of them*; which may be a ſeaſonable *Caveat* to the Judges of our times.

2d *Hubert de Burgo*, once chief Juſtice of *England* (having adviſed *Edw.* 1. in the eleventh year of his Reign, (in his Counſel holden at *Oxford*, *To cancel this Great Charter, and that of the Forreſt*) was juſtly ſentenced according to Law, by his Peers, in open Parliament. When the Statute called CONFIRMATIONIS CARTARUM was made; in the firſt Chapter whereof *Magna Charta* is peculiarly called, that *Common Law*, 25 *Edw.* 1 chap. 2.

3d The *Spencers* (both Father and Son) for their Arbitrary Domination, and raſh, and evil Counſel to *Edw.* the 2d (by which he was ſeduced to break the great *Charter*) were baniſhed for their pains, as *Cook* relates.

4ly The ſame fate attended *Treſillian* and *Belknap*. for their illegal proceedings.

5ly

5ly The Breach of this Great Charter, was the ground of that exemplary Juſtice, done upon *Empſon* and *Dudley*, whoſe caſe is very memoriable in this point; *For though they gratifie* Hen. 7. *in what they did, and had an Act of Parliament for their Warrant, made the eleventh of his reign; yet met they with their due Reward from the hands of Juſtice, that Act being againſt Equity and common Reaſon, and ſo no juſtifiable Ground or Apology, for theſe frequent Abuſes, and Oppreſſions of the People, they were found guilty of.* Hear what the Lord *Cook* further ſaith, concerning the matter, "There was an "Act of Parliament, made in eleventh year of King *Hen.* 7. "which had a fair flattering Preamble, pretending to avoid di-"vers miſchiefs, which were (1ſt) *The high Diſpleaſure of Almighty* "*God.* (2d) *The great Let of the Common Law.* And (3d) *The great* "*Let of the Wealth of this Land.* And the Purven of that Act, tend-"ed in the execution contrary, EX DIAMTRO. *viz. To the* "*high diſpleaſure of Almighty God, and the great Let, nay the utter* "*ſubverſion of the Common Law, and the great Let of the Wealth of* "*this Land*; as hereafter ſhall appear, the ſubſtance of which Act "follows in theſe words.

THat from thenceforth, as well Juſtices of Aſſize, as Juſtices of the Peace, in every County, upon information for the King, *before them made, without any Finding or Preſentment by Twelve men*, ſhall have full Power and Authority, by their diſcretion; and to hear and determine all Offences, as Riots, unlawfull Aſſemblies, &c. committed and done againſt any Act or Statute made, and not repeal'd, &c. (*a Caſe that very much reſembles this of our own times.*)

"By

"By pretext of this Law, *Empſon* and *Dudley* did commit "upon the Subjects, unſufferable Preſſure and Oppreſſions; "and therefore this Statute *was juſtly, ſoon after the deceaſe of* "Hen. 7. *repealed*, at the next Parliament, after his deceaſe, by "the Statute of the 1 Hen. 8. chap. 6.

"*A good Caveat to Parliaments, to leave all cauſes to be meaſured by* "*the Golden and Strait Metwand of the Law*, and not to the in-"certain and crooked cord of diſcretion.

"It is almoſt incredible to foreſee, when any *Maxime, or* "*Fundamental Law of this Realm is altered* (as elſewhere hath been "obſerved) *what dangerous inconveniences do follow*; which moſt "expreſly appeareth by this moſt unjuſt and ſtrange Act of the "eleventh of Hen. 7. for hereby not only *Empſon* and *Dudley* "themſelves, but ſuch Juſtices of Peace (corrupt men) as "they cauſed to be authorized, committed moſt grievous, and "heavy oppreſſions and exactions, grinding the faces of the "poor Subjects by penal Laws (be they never ſo obſolete, or "unfit for the time) by information only, without any pre-"ſentment, or tryal by Jury, being the antient Birth-right of "the Subject; but to hear and determine the ſame, by their "diſcretions, inflicting ſuch penalty as the Statute not repeal-"ed impoſed. Theſe, and other like oppreſſions and exacti-"ons by, or by the means of *Empſon* and *Dudley*, and their In-"ſtruments, brought infinite Treaſure to the Kings Cofers, "whereof the King himſelf, at the end, with great grief, "and compunction repented, as in another place we have ob-"ſerved.

"This Statute of the 11th of H. 7. we have receited, and "ſhewed the juſt inconveniences thereof; to the end that the "like ſhould never hereafter be attempted in any Court of Par-"liament; and that others might avoid the fearfull end of thoſe "two Time-Servers, *Empſon* and *Dudley*, *Qui eorum veſtigiis in-*"*ſiſtant, eorum exitus per horeſcant.*

"See

" See the Statute, of 8 *Edw.* 4. chap. 2. a Statute of Li-
" veries, an Information, &c. By the diſcretion of the Judges
" to ſtand as an Original, &c. This Act is deſervedly re-
" pealed, vide, 12 *R.* 2. chapter 23. Puniſhment by diſcretion,
" &c. vide, 5th of *H.* 4. Chap. 6, 8. See the Commiſſion of
" Sewers; diſcretion ought to be thus diſcribed *Diſcertio eſt deſcer-*
" *nere per Legem, quid ſit juſtum*; From whence three things ſeem,
" moſt remarkable.

Firſt, The great equity and juſtice of the great Charter, with the high value our Anceſtors have moſt deſervedly ſet upon it.

Secondly, The dreadful Maledictions, or Curſe, they have denounced upon the Breakers of it; with thoſe exemplary puniſhments they have not ſpared to inflict upon ſuch notorious Offenders.

Thirdly, So hainous a thing was it eſteemed of old, to endeavour an enervation, or ſubverſion of theſe antient Rights, and Priviledges, that Acts of Parliaments themſelves (otherwiſe the moſt ſacred with the people,) have not been of force enough to ſecure or defend ſuch perſons from condign puniſhment, who in purſuance of them, have acted inconſiſtant with our great *Charter*. Therefore it is, that great Lawyer, the Lord *Cook*, doth more then once agravate the example of *Empſon* and *Dudley* (with perſons of the ſame rank) into a juſt caution, as well to Parliaments as Judges, Juſtices as inferior Magiſtrates, to decline making, or executing any Act, that may in the leaſt ſeem to reſtring or confine this ſo often avowed and confirmed *Great Charter* of the Liberties of *England*, ſince Parliaments are ſaid to err when they croſs it; the Obeyers of their Acts puniſhed, as Time-ſerving Tranſgreſſors; and that Kings themſelves, (though enriched by thoſe courſes) have with great Compunction and Repentance, left among their dying words their recantations.

Therefore

Therefore most notable and true it was, with which we shall conclude this present Subject, what the King pleased to observe in a Speech to the Parliament, about 1662. (*viz.*) *The good old Rules of Law are our best Security.*

The manner of the Courts behaviour towards the Prisoners, and Jury, with their many extravigant Expressions, must not altogether slip our observation.

(1st) That carriage to the Jury outdoes all presidents; they entertained them more like a Pack of Fellons, then a Jury of *honest men*, as being fitter to be try'd themselves, then to acquit others. In short, No Jury, for many Ages, received so many instances of Displeasure and Affront, *Because they prefered not the humor of the Court before the quiet of their own Consciences, even to be esteemed as perjured, though they had really been so, had they not done what they did.*

(2d) Their treatment of the Prisoners was not more Unchristian, then Inhumane. History can scarce tell us of one *Heathen Roman*, that ever was so ignoble to his Captive: What! to *Accuse*, and *not Hear them*; to *threaten to Bore their Tongues, Gag and stop their Mouthes, Fetter their Legs, meerly for defending themselves, and that by the Antient Fundamental Laws of* England *to*. O Barbarous! Had they been *Turks* and *Infidels*, that carriage would have ill become a Christian Court, *such Actions proving much stronger dissuasives, then Arguments to convince them, how much the Christian Religion inclines men to Justice and Moderation above their dark Idolatry*. It is truly lamentable that such occasion should be given, *for intelligence to forreign parts*, where *England* hath had the reputation of a Christian Country, *by the ill treating of its Sober and Religious Inhabitant, for their conscientious Meetings to Worship God*. But, above all, *Dissenters* had little reason to have expected this boarish fierceness from the *Mayor* of *London*, *when they consider his eager prosecution of the Kings Party under* Cromwel's *Government, as thinking he could never give too great a Testimony of his Loyalty to that new Instrument*, which makes the old Saying true, *That one Runagade is worse then three Turks*.

Alderman *Bloodworth*, being conscious to himself of his partial kindness to the *Popish Friars*, hopes to make amends by his zealous prosecution of the poor *Dissenters*; for at the same Ses-

ſions he moved to have an Evidence (*of no ſmall quality*) againſt *Harriſon*, the Mendicant Fryar, ſent to *Bridewel* and whipt; *he was earneſt to have the Jury fined and impriſoned, becauſe they brought not the Priſoners guilty, when no Crime was proved againſt them, but peaceably worſhipping their God:* Whence it may be eaſie to obſerve, *That Popiſh Friars, and prelatical Perſecutors are meer Confederates.*

But what others have only adventured to ſtammer at, the Recorder of *London*, has been ſo ingenious as to ſpeak moſt plainly; or elſe, what means thoſe two fatal Expreſſions, *which are become the talk and terror both of City and Country?*

Firſt, in aſſuring the Jury, *That there would be a Law next Seſſion of Parliament, That no man ſhould have the protection of the Law, but ſuch as conformed to the Church*: Which ſhould it be as true, as we hope it is falſe (and a diſhonorable Propheſie of that great Aſſembly) *the* Papiſts *may live to ſee their* Marian *dayes out-done by profeſt Proteſtants.*

But ſurely no *Engliſh-man* can be ſo ſottiſh, as to conceive that his right to *Liberty* and *Property*, came in with his Profeſſion of the *Proteſtant Religion*; or that his *natural and humane Rights, are dependant on certain religious apprehenſions*, and conſequently he muſt eſteem it a cruelty in the abſtract, that Perſons ſhould be denied the benefit of thoſe Laws which relate to civil concerns, who by their deportment in civil affairs, have no wayes tranſgreſt them, but meerly upon an opinion of Faith and matter of Conſcience.

It is well known that *Liberty* and *Property*, *Trade* and *Commerce* were in the World long before the Points in difference betwixt *Proteſtants* and *Diſſenters*, as the common Priviledges of Mankind; and therefore not to be meaſured out by a conformity to this, or the other religious perſwaſion; but purely as *Engliſh-men.*

Secondly, But we ſhould rather chooſe to eſteem this an Expreſſion of *heat* in the *Recorder*, then that we could believe a *Londons Record* ſhould ſay, an *Engliſh Parliament* ſhould impoſe ſo much *Slavery* on the preſent Age, and entayl it upon their own Poſterity (*who for ought they know may be reckoned among the Diſſenters of the next Age*) did he not encourage us to believe, it was both his *deſire* and his *Judgment*, from that diliberate *Elogy* he

made

made on the *Spaniſh-Inquiſition*, expreſſing himſelf much to this purpoſe, *viz.* "Till now I never underſtood the reaſon of the "pollicy and prudence of the *Spaniards*, in ſuffering the *Inquiſition* "among them: And certainly it will never be well with us, till ſome "thing like unto the *Spaniſh-Inquiſition* be in *England*. The groſs malignity of which Saying, is almoſt inexpreſſable: *What does this but juſtifie that Helliſh deſign of the* Papiſts *to have prevented the firſt Reformation*; If this be good Doctrine, then *Hoggeſtrat*, the grand *Inquiſitor*, was a more venerable Perſon then *Luther* the Reformer. It was an expreſſion that had better become *Cajetan* the *Popes Legate*, then *Howel*, *a Proteſtant Cities Recorder*. This is ſo far from helping to convert the *Spaniard*, that it is the way to *harden him in his Idolatry*; when his abominable *cruelty* ſhall be eſteemed prudence, *and his moſt barbarous and exquiſite torturing of Truth*, *an excellent way to prevent Faction*.

If the Recorder has ſpake for no more then for himſelf, it is well; but certainly he little deſerves to be thought a Proteſtant *and a Lawyer, that puts both Reformation and Law into the Inquiſition*. There being nothing more deſtructive of the Fundamental Laws and Liberties of *England*, and that noble deſign *of primitive Reformation*, *then the Arbitrary Power and Terrifying raks of the Spaniſh-Inquiſition*. *And doubtleſs the* ſupream Governours *of the* Land, *are highly obliged in* Honour *and* Conſcience (in diſcharge of their Truſt to God and the People, to take theſe things into their ſerious conſideration, as what is expected from them, by thoſe who earneſtly wiſh theirs and the Kingdoms ſafety and proſperity.

A Postscript.

The COPY *of Judge* KEELING'S *Case, taken out of the Parliament Journal.*

Die Mercurij, 11th Decembris, 1667.

THe House resumed the Hearing of the rest of the Report touching the matter of Restraints upon Juries; and that upon the examination of divers Witnesses, in several Clauses of restraints put upon Juries, by the Lord Chief Justice Keeling; *whereupon the Committee made their Resolutions, which are as followeth.*

First, *That the Proceedings of the Lord Chief Justice, in the Cases now reported, are Innovations, in the Tryal of men for their Lives and Liberties; and that he hath used an Arbitrary and Illegal power, which is of dangerous consequence to the Lives and Liberties of the people of* England, *and tends to the introducing of an Arbitrary Government.*

Secondly, *That in the place of Judicature, the Lord Chief Justice hath under-valued, vilified, and contemned* Magna Charta, *the great Preservers of our Lives, Freedom, and Propertie.*

Thirdly, *That he be brought to Trial, in order to condign punishment, in such manner as the House should judge most fit and requisite.*

Die

Die Veneris, 13th Decembris, 1667.

Reſolved, &c.

That the Preſedents and Practice of Fining or Impriſoning Juriors, for Verdicts, is Illegal.

Now whether the Juſtices of this Court, in their Proceedings (both towards the Priſoners, and Jury) have acted according to Law, to their Oaths and Duty, and to do Juſtice without partiality, whereby Right might be preſerved, the Peace of the Land ſecured, and our Ancient Laws eſtabliſhed? or whether ſuch Actions tend not to deprive us of our Lives and Liberties, to rob us of (our Birth-right) the Fundamental Laws of *England*? and finally to bring in an Arbitrary and Illegal power to uſurp the Benches of all our Courts of Juſtice, we leave the *Engliſh* Reader to judge?

Certainly, there can be no higher affront offered to King and Parliament, then the bringing their Reputations into ſuſpition with their People, by the irregular actions of ſubordinate Judges: And no Age can parallel the carriage of this *Recorder*, *Mayor*, &c. Nor can we think ſo ignobly of the Parliament, as that they ſhould do leſs then call theſe Perſons to account, who fail'd not to do it to one leſs guilty, and of more repute, (to wit) Judge *Keeling*: For if his behaviour gave juſt ground of jealouſie, that he intended an Innovation, and the introducing an Arbitrary Government, this *Recorder* much more. Did chief Juſtice *Keeling* ſay, *Magna Charta* was *Magna farta*; ſo did this *Recorder* too: And did Juſtice *Keeling* Fine and Impriſon Juries, contrary to all Law; ſo did this *Recorder* alſo. In ſhort, there is no difference, unleſs it be, that the one was queſtioned, and the other deſerves it: But we deſire in this they may

may be said to differ, That though the former escap'd punishment, the latter may not, who having a Presedent before, did notwithstanding notoriously transgress.

To conclude, The Law supposes the King can't err, because it is willing to suppose, he alwayes acts by Law (and *Voluntas Legis, est voluntas Regis*, Or the Kings Will is regulated by the Law) but it says no such thing of his Judges. And since they are oblig'd by Oath to disregard the Kings Letters (though under the Broad and privy-Seal) if they any wise oppugn, or contradict the Laws of the Land; and considering that every singular Action of an inferior Minister, has an ugly reference to the Supream Magistrate, where not rebuked; we can't but conclude, that both Judges are answerable for their irregularities, especially, where they had not a limitation of a Kings Letter, or Command; and that the Supream Magistrate is oblig'd, as in Honour and Safety to himself, *Alfred*-like, to bring such to condign punishment, lest every Sessions produce the like Tragical Scenes of Usurpation over the Consciences of Juries, to the villifying and contemning of Justice, and great detriment, and prejudice of the good and honest men of this Famous and Free City.

FIAT JUSTICIA.

FINIS.